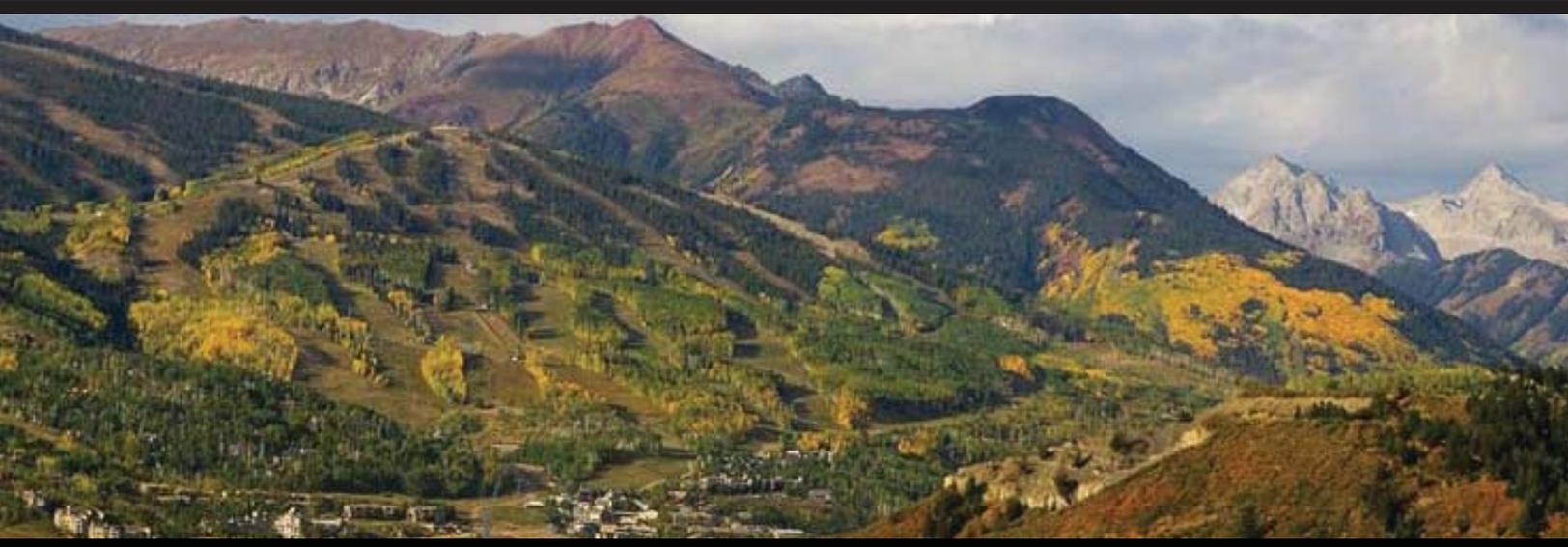




**SNOWMASS SKI AREA  
ENVIRONMENTAL ASSESSMENT for the  
BURNT MOUNTAIN EGRESS TRAIL**



**VOLUME 2:  
Decision Notice and  
Finding of No Significant Impact  
Response to Comments  
Errata**

**SEPTEMBER 2013**

USDA Forest Service  
White River National Forest  
Aspen-Sopris Ranger District



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## LIST OF ACRONYMS

ASC	Aspen Skiing Company
EA	Environmental Assessment
EIS	Environmental Impact Statement
ROD	Record of Decision
LAU	Lynx Analysis Unit
ID Team	Interdisciplinary Team
NEPA	National Environmental Policy Act
NFS	National Forest System
SUP	Special Use Permit
WRNF	White River National Forest
IRA	Inventoried Roadless Area
DN/FONSI	Decision Notice/Finding of No Significant Impact
RARE	Roadless Area Review and Evaluation
CFR	Code of Federal Regulations
CRA	Colorado Roadless Act
CRR	Colorado Roadless Rule
FSH	Forest Service Handbook
U.S.C.	United States Code
USDA	United States Department of Agriculture
FEIS	Final Environmental Impact Statement
SIO	Scenic Integrity Objective
MA	Management Area
BA	Biological Assessment
BE	Biological Evaluation
TES	Threatened, Endangered, and Sensitive
MIS	Management Indicator Species
PDC	Project Design Criteria
CEQ	Council on Environmental Quality
SAOT	Skiers-at-one-time
AADT	Average Annual Daily Traffic
R2	Region Two
FSM	Forest Service Manual
TOSV	Town of Snowmass Village
USFWS	United States Fish and Wildlife Service

# **Decision Notice and Finding of No Significant Impact**

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# Decision Notice and Finding of No Significant Impact

## Snowmass Ski Area Burnt Mountain Egress Trail

USDA Forest Service, Rocky Mountain Region  
White River National Forest  
Aspen-Sopris Ranger District  
Pitkin County, Colorado

September 2013

This Decision Notice documents my decision and rationale for approving a proposed project within the Snowmass Ski Area (Snowmass) Special Use Permit (SUP) boundary on the White River National Forest (WRNF) and located within Pitkin County, Colorado. My decision is based on and supported by the August 2013 Environmental Assessment for the Burnt Mountain Egress Trail (2013 EA).

The 2013 EA analyzed an egress trail designed to improve egress from the Burnt Mountain Glades for skiers and Snowmass ski patrol. The public was invited to comment on the proposed projects during an initial scoping period and on the 2013 EA that was released for a 30-day comment period. Legal notices were published in the Glenwood Post Independent for each opportunity to comment.

The accompanying Finding of No Significant Impact (FONSI) documents and supports the determination that the Selected Alternative is not anticipated to have a significant impact on the human or natural environment.

### Decision and Reasons for the Decision

After thoroughly considering the project purpose and need, issues, range of alternatives and analyses presented in the EA, as well as public comments that were received, **I have decided to select and approve Alternative 3 from the EA.** My decision meets the project purpose and need (as stated in Chapter 1 of the EA) and is consistent with the White River National Forest Land and Resource Management Plan – 2002 Revision, as amended (2002 Forest Plan). My decision includes all components of Alternative 3 as described in Chapter 2 of the EA. All project design criteria (PDC) stated in Chapter 2 of the EA, and included in Appendix 1 as Table DN-1 of this document, are required to be adhered to by Snowmass. Refer to the attached Selected Alternative Figure for the project location.

The Selected Alternative egress trail design employs a combination of a narrower trail and gladed terrain to facilitate public and emergency egress. It will take advantage of an existing egress route, the Eastern

Traverse, and will facilitate collecting skiers from some of the eastern portions of the Burnt Mountain Glades.

The Selected Alternative egress trail is defined as follows:

1. The uppermost portion of the egress trail will be 10 feet wide for approximately 500 linear feet. This portion of the trail maintains an approximately 6 percent grade where skiers would not need to make turns.
2. Below the 10-foot wide segment, the topography steepens to an approximate 30 percent slope. At this point the trail will be gladed, allowing for tree removal up to a 40 percent basal area reduction for a length of approximately 700 linear feet and a width of approximately 250 feet.<sup>1</sup> This width and percent of tree removal will allow skiers to make turns on this steeper portion of trail while spreading people across the terrain to provide a more sustainable egress route. This will maintain more viable snow conditions than the existing egress route. It will also allow ski patrollers to negotiate the area for emergency purposes with a toboggan or snowmobile.
3. At the bottom of the gladed area, a 20-foot wide cleared egress trail will be created with 500 linear feet (0.2 acre) of spot grading to address side slope conditions that would better facilitate snowcat access for grooming. This grading will not be implemented during the initial construction of the project. My decision requires Aspen Skiing Company (ASC) to implement the project without grading and monitor the effectiveness of the project over the course of at least one season. Should conditions necessitate grading to occur to achieve the Purpose and Need, the WRNF and ASC will collaborate to determine the timing to implement the site grading approved with my decision. Grooming operations will not extend up-mountain on the egress trail beyond this lower segment of trail. In addition, select tree removal will occur beyond the 20-foot cleared width, extending to a total disturbance width of approximately 35 feet. Dead hazard trees within striking distance of the skiable path will also be removed.

In addition to the alignment described above, select tree removal will occur along the initial section of the existing Eastern Traverse until it intersects the gladed skiing terrain. It would serve as a secondary route out of the Burnt Mountain Glades. This trail is downhill of the primary egress route and will be help to accommodate the existing skier use of the Burnt Mountain Glades. The improvement of the Eastern Traverse will help to spread skiers across both trails. The exterior edge of the Eastern Traverse and proposed egress trail will be roped as the new ski area operational boundary. No part of the proposed trail segment is within the Burnt Mountain Colorado Roadless Area.

Selected Alternative disturbance will include full clearing, grading, glading (up to 40 percent basal area tree removal) and select hazard tree removal. Approximately 0.8 acre of full clearing, 4 acres of glading, and select tree removal along the initial portion of Eastern Traverse (approximately 30 trees) will be

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<sup>1</sup> Basal area is the cross-sectional area of tree trunks within an area, not the canopy cover.

required for an egress trail that addresses the Purpose and Need. In addition, as described above, spot grading up to 500 linear feet (0.2 acre) of trail will be required to provide a consistent skiable egress. Trees will be flush-cut and removed from the area by skidding, over ground or snow, or by helicopter.

## Rationale for My Decision

In reaching my decision, I relied on an Interdisciplinary (ID) Team comprised of Forest Service resource specialists to analyze the effects of the three alternatives documented in the EA. I considered the following issues and concerns: anticipated effects to the Burnt Mountain Colorado Roadless Area, recreation, wildlife and vegetation within the Project Area. I also reviewed the Project Design Criteria (PDCs) included in the EA, reviewed the public comments during scoping and on the EA, and considered how the Selected Alternative will respond to the stated purpose and need.

The EA public comment period generated nine comment letters from individuals and organizations, both in support and opposition to the action alternatives. Numerous comments were received specifically in support of Alternative 3 – the Selected Alternative.

In reviewing the qualitative and quantitative effects on the human and biological environment presented in the EA, I find they have been adequately addressed and disclosed. The argument of whether the Project Area should still be a designated roadless area has been challenged several times by individuals and organizations with a passionate interest in the area. However, the Project Area is not a designated roadless area as defined by the Colorado Roadless Rule. I considered impacts to the full range of resources affecting the human, biological, and physical environments. I have reviewed the potential direct, indirect, and cumulative impacts. Specifically, I've considered the impacts to Canada lynx, scenery resources, soils and vegetation. Through the application of appropriate PDC identified to minimize impacts to these resources, I feel confident potential impacts have been thoroughly assessed and disclosed. Additionally, as a way to minimize impacts, I have approved an adaptive management technique to initially construct the project without grading portions of the egress trail. I want ASC to implement this project while monitoring and discussing with the WRNF if grading is necessary.

## Project Design Criteria

The EA presents the PDCs in Chapter 2, Table 2-3, all of which have been incorporated into the Selected Alternative. My decision includes following the PDCs as described in the EA and in Appendix 1 of this decision notice.

Failure to comply with the required PDCs will constitute a breach of the project approval and could temporarily suspend construction and/or operations on the facilities approved by this decision.

The Selected Alternative, along with my decision to require all of the PDC, meets all applicable laws, regulations, and policies. With the application of PDCs, the project will not result in any unacceptable effects to NFS lands.

In addition to the PDCs prescribed in Appendix 1 as Table DN-1 for each resource area, Snowmass is required to prepare and submit for Forest Service approval the following documents:

- Project construction and grading plans
- Pre-construction erosion control/drainage management plans
- Pre and post-construction noxious weed control plans
- Post-construction re-vegetation plans

## Alternatives Considered In Detail

In addition to the Proposed Action, the following two other alternatives were analyzed in detail:

- No Action Alternative
- Alternative 3

For a more detailed discussion of the alternatives considered, refer to Chapter 2 of the EA.

The No Action Alternative is required by NEPA and provides a baseline for comparing the effects of the action alternatives. No Action essentially reflects a continuation of existing management practices without changes, additions, or upgrades. No new recreational opportunities will be approved under the No Action Alternative.

Alternative 2—the Proposed Action—includes a proposed egress trail segment that would provide a more defined route from the gladed terrain on the eastern portion of Burnt Mountain. The 3,200-foot trail segment would average 35 feet in width and would be groomed when snow conditions necessitate. The elements of the Proposed Action are discussed in detail in Chapter 2 of the EA.

Alternative 3 includes an egress trail design that employs a combination of a narrower trail and gladed terrain to facilitate public and emergency egress. It would take advantage of an existing egress route, the Eastern Traverse, and would facilitate collecting skiers from some of the more eastern portions of the Burnt Mountain Glades. The elements of Alternative 3 are discussed in detail in Chapter 2 of the EA.

## Alternatives and Design Components Considered But Eliminated from Detailed Analysis

The range of alternatives considered by the responsible official includes all reasonable alternatives to the Proposed Action that are analyzed in the document as well as other alternatives eliminated from detailed study. Alternatives not considered in detail may include, but are not limited to, those that fail to meet the Purpose and Need, are technologically infeasible or illegal, or would result in an unreasonable

environmental harm.<sup>2</sup> Several alternatives were considered but eliminated from detailed analysis based on resource issues and their relation to the Purpose and Need. These alternatives are discussed below.

### Do Not Build an Egress Trail. Return the area to an Inventoried Roadless Area with Backcountry Skiing

The No Action Alternative analyzes the option of not constructing an improved egress trail out of the Burnt Mountain Glades. Historically, six primary events occurred that have led to the current state of this Project Area.

- In 1973 a new SUP was issued to include Burnt Mountain within the Snowmass SUP boundary.
- The 1994 FEIS/ROD approved development on Burnt Mountain including Long Shot ski trail and the Two Creeks lift and trails.
- In 2002 the WRNF Forest Plan identified the area as Management Area 8.25: Ski Areas – Existing and Potential.
- In 2006 the WRNF approved the development of the Burnt Mountain Glades. The approval to construct the portion of the egress trail being analyzed within this EA was remanded under an administrative appeal with direction to reanalyze the project only for the potential effects the project might have on the Burnt Mountain Inventoried Roadless Area.
- In 2012 the Colorado Roadless Rule eliminated the roadless designations for 8,300 acres inside ski area SUP boundaries, including 80 acres within the Snowmass SUP boundary.
- In 2012 Snowmass developed the Burnt Mountain Glades through select tree removal and the configuration of the operational boundary.

Due to these events, there remains a need for improved access from the Burnt Mountain Glades as the area is no longer within the Burnt Mountain IRA, and no longer characterized as Forest Service backcountry access terrain. Returning the area to the Burnt Mountain IRA is beyond the scope of this analysis. Removing the IRA from the SUP area was analyzed in the Rulemaking for Colorado Roadless Areas EIS.<sup>3</sup> Continued use of this area for managed/patrolled skiing terrain is completely consistent with the SUP, the Forest Plan and the Colorado Roadless Rule.

### Short Egress Trail

Through preliminary project planning, several other alignments for an egress trail from Burnt Mountain were considered, including shorter routes. Due to topographical constraints such as cliff bands and fall line of the glades, no alternate alignment was identified that would meet the Purpose and Need. A shorter egress trail above the proposed alignment would not effectively collect skiers in the Burnt Mountain

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<sup>2</sup> FSH 1909.15, Chapter 10, Section 14.4

<sup>3</sup> USDA Forest Service, 2012a

Glades and provide a return to Long Shot trail. Skiers would continue to descend what was previously thinned and a similar experience would result as the current condition. In addition, ski patrol would not have efficient access to the area below the shorter egress trail alignment. Specifically, a shorter egress trail may be “reasonably related to the purpose of the project,” but it would not “address the significant issues and meet the Purpose and Need for the Proposed Action.”<sup>4</sup>

Moreover, no significant resource issues (in recreation, wildlife and vegetation, cultural resources, soils and geology, traffic, scenery resources, or watershed) associated with the Proposed Action were identified that would require that the analysis consider a shorter egress.

### Minimal Egress Trail

Alternative 3 was developed partially in response to comments requesting selective tree removal and a narrower egress trail for the entirety of the egress route. Ultimately, minimizing the trail width and disturbance was balanced with meeting the Purpose and Need for the project, to address existing guest safety concerns for skiers egressing from the Burnt Mountain Glades to Long Shot trail and improve emergency access/egress associated with the Burnt Mountain Glades. Alternative 3 would require a narrower snowcat to groom approximately 20 feet wide traverse and grooming would be limited to the lower half of the trail segment. Other portions of the trail would require selective tree removal, rather than clearing a 35-foot wide trail. Providing a minimal trail width for the entire length of the trail, including steeper sections, would not meet the purpose and need of providing more dependable snow conditions, and would not result in a more viable egress route for the skiing public and emergency evacuation route for the extrication of injured skiers by ski patrol. For these reasons, this alternative was eliminated from detailed analysis. Refer to the Alternative 3 description for additional information on how this option was incorporated into this alternative.

## Public Involvement

Consistent with direction found in 36 CFR §215.5 (Legal Notice of Proposed Actions), the Proposed Action was published by the WRNF as a Notice of Proposed Action (NOPA) on February 8, 2013 in the Glenwood Springs Post Independent. The NOPA was prepared to solicit public comments on the Purpose and Need for Action, the Proposed Action and alternatives to the Proposed Action. Following the legal notice, the public had the opportunity to comment for 30 days; this constituted the only opportunity to comment on this project prior to release of the decision notice.

The WRNF received four comment letters: one from the Summit County Planning Department, one from the Summit County Board of County Commissioners, and two from members of the public.

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<sup>4</sup> 40 CFR 1502.14(a); USDA Forest Service, 2008b

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## Finding of No Significant Impact

After reviewing the EA, I have determined that implementation of the Selected Alternative will not, individually or cumulatively, significantly affect the quality of the human or natural environment. The provisions of 40 CFR 1508.27(b) indicate that project significance must be judged in terms of both *context* and *intensity*. Based on a review of these provisions, I have determined that an environmental impact statement is not required. I base my findings on the following definitions of *context* and *intensity*:

### Context

*Context* means that the significance of an action must be analyzed in several ways such as society as a whole (human, national), in the affected region, the affected interests, and the locality. The effects of implementing the Selected Alternative are localized, with implications only for the immediate vicinity of the ski area. Cumulative effects of past management, combined with the current proposal and reasonably foreseeable future actions, are displayed and analyzed in the EA for each resource.

### Intensity

*Intensity* refers to the severity of the anticipated impact. The following ten intensity factors are used to evaluate intensity:

#### **1. Consideration of both beneficial and adverse impacts.**

I have considered both the beneficial and adverse impacts associated with the Selected Alternative as presented in the EA and this Decision Notice. The Selected Alternative will provide recreational benefits to users of the WRNF and will improve recreation opportunities on NFS lands. In addition, the Selected Alternative will improve the safety of the area through enhanced ski patrol access and skier egress. Adverse impacts to roadless areas, recreation, wildlife and vegetation are thoroughly documented in Chapter 3 of the EA and are determined to be non-significant. Other issues and resources were not included in detailed analysis in the EA due to a lack of anticipated impacts or because the resource was thoroughly analyzed through previous analyses and the conditions had not changed. My finding of no significant environmental effects is not biased by the beneficial effects of the action.

#### **2. Consideration of the effects on public health and safety.**

The Selected Alternative will not significantly affect public health or safety. The projects have been designed to provide guests with a safe and high quality recreation experience at Snowmass. The Burnt Mountain Glades will continue to be a low density (skiers/acre) skiing experience.

#### **3. Consideration of the unique characteristics of the geographic area.**

The area affected by the approved project elements does not represent a unique geographic area, contain historic features, park lands, prime farmlands, wilderness, wild and Scenic Rivers, or ecologically critical areas. The Selected Alternative would clear 0.8 acre of overstory vegetation and would “glade” 4 acres of overstory vegetation. This relatively small amount of habitat loss would not preclude lynx movement and

foraging capability across the ski area, nor across the Lynx Analysis Unit. Therefore, the Selected Alternative will not significantly impact any of the aforementioned unique characteristics.

**4. Consideration of the degree to which the effects on the quality of the human environment are likely to be considered controversial.**

Based on the fact that the Forest Service has analyzed and approved numerous projects of this type, I do not believe the effects on the quality of the human environment to be “highly controversial” for the following three reasons:

- Four oppositional letters were received by the public during the 30-day comment period; however, the arguments raised in two of the letters contained numerous substantive comments.
- The substantive comments raised by the opposition are in many regards beyond the scope of this analysis and challenging statements made by qualified biologists and Forest Service specialists.
- Many of the comments raised by the letters contained subjective statements over the “quality” of an 80-acre parcel that is no longer designated roadless.

**5. Consideration of the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.**

This project is common at ski areas that operate on NFS lands. The analysis shows the effects are not uncertain, and do not involve unique or unknown risks. Therefore, based on the Forest Service’s experience with implementing these types of activities, as well as the requirement to implement PDC to minimize effects, I have determined that there will not be significant effects on the human environment.

**6. Consideration of the degree to which this action may establish a precedent for future actions with significant effects or that it represents a decision in principle about future considerations.**

I have determined that this decision does not establish precedence for future actions with significant risks to the environment. The Selected Alternative is consistent with Forest-wide and Management Area 8.25 direction, as well as Snowmass’ SUP. Furthermore, the approved projects and activities are common at a developed four-season resort such as Snowmass. The Forest Service determined that these projects are similar to what has been approved and/or currently exist on NFS lands. Certain commenters have argued that this project sets a precedent as being the first ski area NEPA project to occur in areas that were previously designated roadless areas under the 2001 Roadless Rule. The 2012 Colorado Roadless Rule eliminated the roadless area designation within ski SUP areas, including the Snowmass SUP area. In this regard, the 2012 Colorado Roadless Rule set the precedent and removed the roadless area designation, not my decision on this project.

**7. Consideration of the action in relation to other actions with individually insignificant but cumulatively significant impacts.**

The Cumulative Effects analyses presented for each resource throughout Chapter 3 in the EA discloses a series of past, present, and reasonably foreseeable future actions with potential to lead to effects which are

cumulative in nature. Due to avoidance, project specific PDCs and mitigation the analysis does not identify any cumulatively significant impacts that are anticipated to result from implementation of the Selected Alternative.

**8. Consideration of the degree to which the action may affect listed or eligible historic places.**

As indicated on page 3-2 of the EA, no eligible sites or findings are recorded within the Project Area; therefore, no effects to eligible heritage and cultural resources are anticipated to occur as a result of implementation of the Selected Alternative. Additionally, as stated in the PDC (Table 2-3 in the EA), if undocumented historic and/or prehistoric properties are discovered during ground disturbing or planning activities associated with construction, they will be treated as specified in 36 CFR 800.11 concerning Properties Discovered During Implementation of an Undertaking.

**9. Consideration of the degree to which the action may adversely affect an endangered or threatened species or its critical habitat.**

The Selected Alternative will have no significant adverse effect on any federally listed threatened, endangered or proposed plant or animal species. Due to implementation of the Selected Alternative, there will be a loss of approximately 0.8 acre of conifer vegetation due to the construction of the trail, an additional 4 acres gladed, and select trees cleared, all of which will occur in lynx habitat. The glading would remove approximately 60 to 75 percent of the vegetation within the 4-acre area which equates to clearing of approximately 2.4 to 3 acres. In total, the clearing of lynx habitat under the Selected Alternative will be approximately 3.2 to 3.8 acres. This small amount of habitat loss will not preclude lynx movement and foraging capability across Snowmass, nor across the Lynx Analysis Unit. The Selected Alternative is consistent with all applicable lynx-related provisions of the Southern Rockies Lynx Management Direction and the associated FEIS/ROD, as well as with Section 7(d) of the Endangered Species Act.

**10. Consideration of whether the action violates Federal, State, or local laws or requirements imposed for the protection of the environment.**

I have reviewed in the EA, Biological Assessment, and the project file and have determined that no Federal, State, or local laws, regulations, or requirements for protection of the environment will be violated with implementation of the Selected Alternative. These laws and requirements are detailed in the next section.

## **Findings Required by Other Laws and Regulations**

I have determined the Selected Alternative is consistent with the 2002 Forest Plan goals and objectives and forest-wide and Management Area 8.25 standards and guidelines, and therefore this project complies with the National Forest Management Planning Act of 1976. In addition, implementation and effects of this decision will be consistent with the following acts and executive orders:

- Architectural Barriers Act (ABA) of 1968

- Americans with Disabilities Act (ADA) of 1990
- Archaeological Resource Protection Act of 1978
- Clean Air Act of 1955, as amended
- Clean Water Act of 1948, as amended
- Endangered Species Act of 1973, as amended
- Fish and Wildlife Coordination Act of 1934, as amended
- Forest and Rangeland Renewable Resources Planning Act of 1974
- Multiple-Use Sustained Yield Act of 1960
- National Environmental Policy Act of 1969, as amended
- National Forest Ski Area Permit Act of 1986, as amended
- National Historic Preservation Act (NHPA) of 1966, as amended
- Organic Administration Act of 1897
- Safe Drinking Water Act of 1974, as amended
- Protection of Wetlands Executive Order 11990

## **Administrative Review or Appeal Opportunities**

This decision is subject to administrative review (appeal) pursuant to 36 CFR Part 215. The appeal must be filed (regular mail, fax, email, hand-delivery, or express delivery) with the Appeal Deciding Officer at: USDA Forest Service, Rocky Mountain Region, 740 Simms, Golden, CO 80401; FAX: (303) 275-5154.

The office business hours for submitting hand-delivered appeals are: Monday through Friday 7:30 a.m. to 4:00 p.m., excluding holidays. Electronic appeals must be submitted in a format such as an email message, plain text (.txt), rich text format (.rtf), or Word (.doc) to [appeals-rocky-mountain-regional-office@fs.fed.us](mailto:appeals-rocky-mountain-regional-office@fs.fed.us). The appeal must have an identifiable name attached or verification of identity will be required. A scanned signature may serve as verification on electronic appeals.

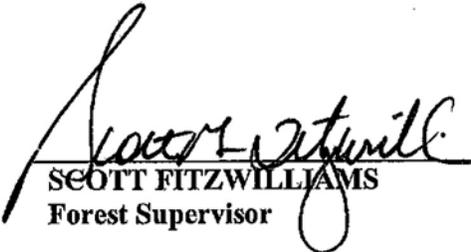
Appeals, including attachments, must be filed within 45 days from the publication date of this notice in the *Glenwood Post Independent*, the newspaper of record. Attachments received after the 45-day appeal period will not be considered. The publication date in the *Glenwood Post Independent* is the exclusive means for calculating the time to file an appeal. Those wishing to appeal this decision should not rely upon dates or timeframe information provided by any other source. Individuals or organizations who submitted comments during the comment period specified at Section 215.6 may appeal this decision. The notice of appeal must meet the appeal content requirements at 36 CFR 215.14.

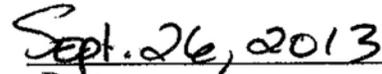
## Implementation Date

If no appeals are filed within the 45-day time period, implementation of the decision may occur on, but not before, five (5) business days from the close of the appeal filing period. When appeals are filed, implementation may occur on, but not before, the 15th business day following the date of the last appeal disposition.

## Contact

For additional information concerning this decision or the Forest Service appeal process, contact: Matt Ehrman, Forest Planner, at (970) 945-3314.

  
SCOTT FITZWILLIAMS  
Forest Supervisor

  
Date

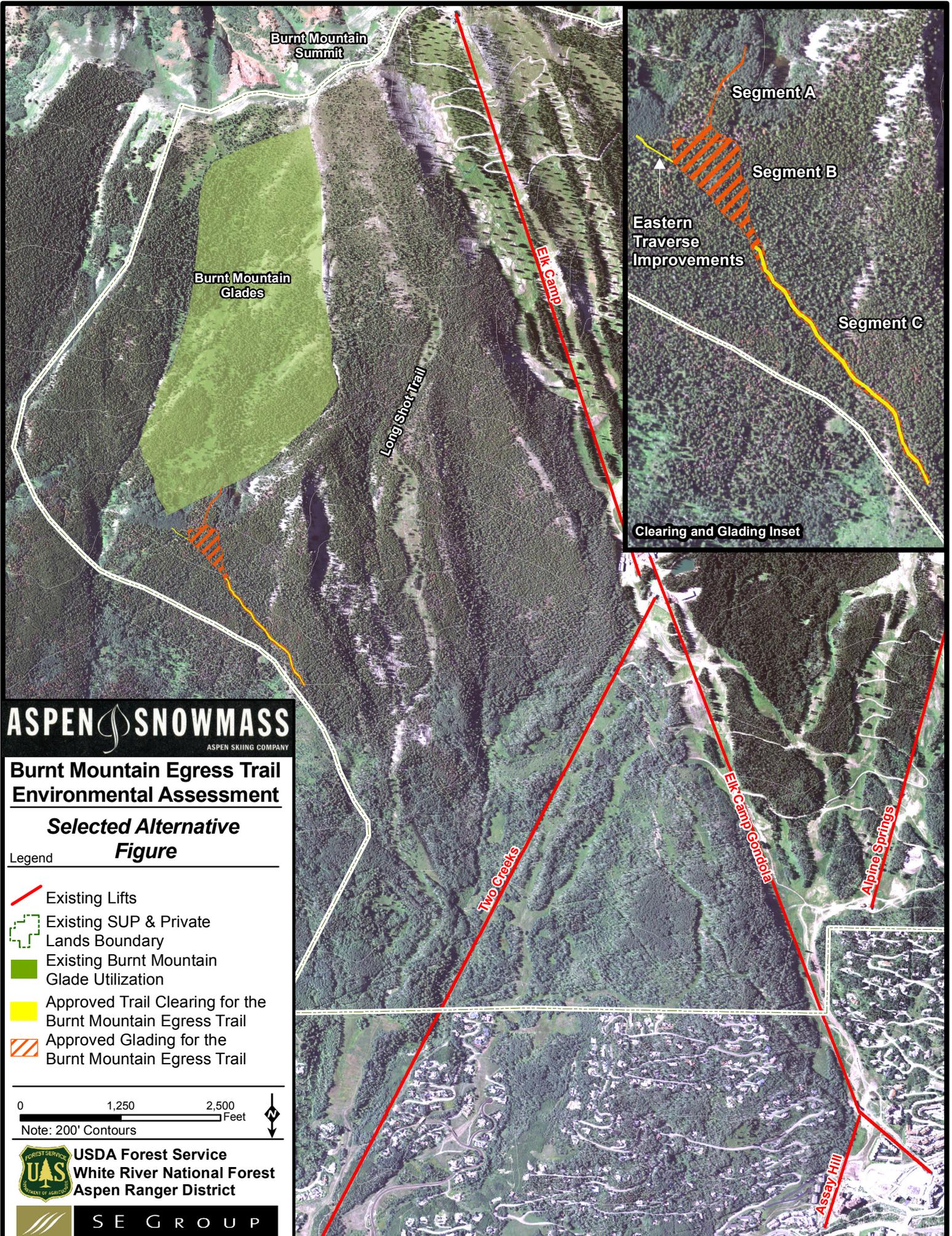
## Appendix 1: Project Design Criteria (PDC)

**Table DN-1:  
Project Design Criteria Incorporated into the Selected Alternative**

<b>CULTURAL RESOURCES</b>
If undocumented historic and/or prehistoric properties are located during ground disturbing activities or planning activities associated with construction activities, they would be treated as specified in 36 CFR 800.11 concerning Properties Discovered During Implementation of an Undertaking.
<b>GEOLOGY AND SOILS</b>
Prior to construction of the egress trail an Erosion Control Plan will be developed, submitted for review, and approved by the Forest Service.
Soil-disturbing activities will be avoided during periods of heavy rain or wet soils.
<b>VEGETATION</b>
Adequately mark trail clearing limits to avoid mistakes in clearing limits during construction.
Due to the timing of this decision, a pre-construction survey for plant species with potential habitat in the trail alignment will need to take place during the appropriate biological window. If the survey detects any populations of moonworts in the alignment, all practical measures shall be implemented to avoid disturbance to the colony.
Avoid or minimize impacts to known moonwort communities or genus groups. Should <i>Botrychium</i> individuals or populations be observed within the egress trail alignment, efforts shall be made to avoid disturbance to the population.
<b>WILDLIFE</b>
To protect the security and stability of elk production range, restrict construction and maintenance between May 15–June 20 (potentially May 1–June 30, depending on winter snow accumulations and spring weather conditions) annually within identified production habitats on NFS land.
Closures and signage will be installed along the eastern edge of the Burnt Mountain traverse to mark the ski area boundary.
Conduct surveys for the boreal owl, flammulated owl and purple martin prior to implementation.
Where vegetation is removed, survey for the northern goshawk. All potential and active nests should be avoided, retaining nest trees or snags, as feasible.
Control all human foods and garbage associated with construction to make it unavailable to black bears.
If raptor nests are located within the zone of influence of the proposed project, notify the Forest Service biologist prior to any construction activity so that site-specific mitigation can be developed.
Restrict the removal of snags and coarse woody debris unless there are skier safety concerns. Leave other snags and woody material on-site to benefit species dependent upon these habitat structural elements.
<b>SCENERY RESOURCES</b>
Revegetate disturbed areas promptly upon project completion.
<b>RECREATION</b>
Stumps should be cut as low as possible to the ground to avoid safety hazard.

**Table DN-1:  
Project Design Criteria Incorporated into the Selected Alternative**

<b>WATERSHED AND WETLANDS</b>
Erosion control and revegetation efforts would commence immediately following construction as per Forest Service BMPs and an approved Erosion Control Plan.
All streams and wetlands will be avoided during ground disturbing activities.
Apply BMPs for all ground disturbing activities to avoid sediment migration from ground disturbance into wetlands.



# ASPEN SNOWMASS

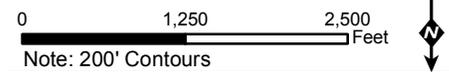
ASPEN SKIING COMPANY

## Burnt Mountain Egress Trail Environmental Assessment

### Selected Alternative Figure

Legend

-  Existing Lifts
-  Existing SUP & Private Lands Boundary
-  Existing Burnt Mountain Glade Utilization
-  Approved Trail Clearing for the Burnt Mountain Egress Trail
-  Approved Glading for the Burnt Mountain Egress Trail



USDA Forest Service  
White River National Forest  
Aspen Ranger District

SE GROUP

# **Response to Comments**

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# RESPONSE TO COMMENTS

A Legal Notice for the Environmental Assessment for the Burnt Mountain Egress Trail was published in the Glenwood Post on August 8, 2013. The comment period extended 30 days and nine comment letters were received—both oppositional and supportive. All comment letters were reviewed for substantive comments, and contact information for each commenter was entered into a master database. These substantive comments provide the foundation for which this Response to Comments is based. The variety of comments raised by the public included, but was not limited to: roadless areas and qualities, NEPA process, Purpose and Need, and Alternatives.

Names and affiliations of people who submitted comments on the EA are provided here:

Gail Bartik

David Corbin – Aspen Skiing Company

D.J. Duerr – Ark Initiative

William S. Eubanks II – Ark Initiative

Robert “Bob” Jenkins

Royal Laybourn

Anna Olson – Ark Initiative

Stephanie Parmelee

Greg Rulon

Mollie Rusher

Scott Schlesinger – Ark Initiative

## A. NEPA PROCESS

- 1. The EA should be clarified in at least three places to recognize that timber removal and road construction on lands formerly designated as roadless inside ski area special use permits requires additional NEPA analysis and a new Forest Service decision only if such NEPA analysis and decision has not already been undertaken. On page 3-20, as well as on pages 3-24 and 3-33, the EA addresses the regulatory status of lands - like the 80 acre parcel on Burnt Mountain- that are inside ski area special use permits and were designated as roadless under the 2001 Roadless Rule. The Colorado Roadless Rule eliminated the roadless designation for such lands. However, the EA states on page 3-20 (and on pages 3-24 and 3-33) that “Because the 2012 Colorado Roadless Rule does not approve any future ski area projects or expansions, any future proposals for road construction or tree cutting would require a site-specific NEPA process.” That discussion can be misread to mean that a new site-specific NEPA analysis is required after adoption of the 2012 Colorado Roadless Rule for any timber removal or road construction inside a ski area special use permit on lands formerly designated as roadless, even if a prior NEPA document analyzed the timber removal or road construction. It can also be misread to require the Forest Service to re-authorize timber*

*removal or road construction that it previously authorized before adoption of the Colorado Roadless Rule. The Forest Service should clarify the quoted sentence on page 3-20, and the similar statements on pages 3-24 and 3-33, to add the underlined language: “Because the 2012 Colorado Roadless Rule does not approve any future ski area projects or expansions, any future proposals for road construction or tree cutting would require a site-specific NEPA process, unless previously analyzed under NEPA or authorized.” This clarification is necessary to prevent the identified statements in the EA from being misapplied in other settings to similarly-situated lands at the ASC ski areas. This clarification is also consistent with the grandfathering provisions of the Colorado Roadless Rule summarized above, which make clear that no part of the Colorado Roadless Rule should be construed to require the Forest Service to remake or change a decision it made before adoption of the Rule. 36 C.F.R. § 294.48(a), (b).*

Response

The commenter is correct regarding previously analyzed and authorized actions. Prior to implementation of any project that was previously approved on NFS lands, the WRNF reviews the analysis and the current site specific conditions to ensure the approved project, affected environment and environmental conditions reflect the site-specific analysis conducted through the NEPA review.

- 2. The USFS sent a copy of the DEA to an attorney at MGC, but it did not send a copy to us. MGC, which was working on other matters at the time, assumed the USFS had also sent a copy of the DEA to us, which turned out not to be the case. MGC is not TAI. MGC is representing us on a relatively narrow set of legal issues. We have many concerns about the Burnt Mountain project that MGC is not aware of and cannot address. In addition, MGC is representing numerous other parties, in the Burnt Mountain controversy and in other matters. It is not MGC's job to distribute a USFS Draft EA and invite public comments. This is the USFS's responsibility. MGC nevertheless emailed a copy of the DEA to us on August 21, 2013. Unfortunately, because of the USFS's failure to honor our request to be sent a copy of the Draft EA, we were not afforded the same review and comment period the USFS granted to other parties, including the Aspen Skiing Company (ASC) and project proponents to whom NEPA Process the USFS sent a copy of the DEA promptly upon its release. This is not only unfair, we believe it violated the law. Specifically, Section 322(b)(1)(A) of the Forest Service Decisionmaking and Appeals Reform Act (ARA) obligates the USFS to promptly mail “notice about the proposed action to any person who has requested it in writing.” We requested notice in writing. Given that the cost of issuing a new notice would be minimal, the only conceivable reasons for not taking this reasonable step would be to obstruct our participation and expedite the project as yet another favor to ASC.*

Response

Mr. Duerr was not on the mailing list for the distribution of the EA. Mr. Duerr was on the scoping list; however, during scoping and through the preparation of the EA, the WRNF did not receive a letter or any type of correspondence directly from Mr. Duerr. The WRNF received a letter from Meyer Glitzenstein &

Crystal, signed by William S. Eubanks II. The letter states, “We submit the following public comments on behalf of The Ark Initiative (“TAI”), a 501(c)(3) nonprofit conservation organization, and Donald Duerr in his individual capacity.”

On August 8, 2013, Mr. Eubanks sent an email to the WRNF requesting a copy of the Document. On August 8, an electronic copy of the EA was transmitted to Mr. Eubanks, and Eubanks confirmed receipt with a “thanks.”

The process used for this project was that if a letter or a request was received by an individual to be included on an individual project mailing, then a notice was sent. This is consistent with 40 CFR 1506.6. In accordance with 40 CFR § 1506.6, the WRNF made diligent efforts to involve the public in preparing and implementing their NEPA procedures; provided public notice of the availability of environmental documents; mailed notice to those who requested it on **an individual action** (emphasis added); and published project announcements through press releases in papers of local newspapers and other media.

3. *Since the USFS left us out of the loop on the DEA, it is likely the agency also “forgot” to notify and invite comments from other interested parties who had expressed opposition to the development of Burnt Mountain. Did the USFS send the DEA to any of the parties who commented on the original Master Plan EIS and objected to expanding the ski area onto Burnt Mountain? There were hundreds of people who voiced concerns about this. Did the agency send the DEA and solicit comments from all the parties who participated in the 2006 EA for the Master Plan Amendment and who expressed concerns about cutting new ski runs on Burnt Mountain?*

Response

The interested parties and public were notified in accordance with 40 CFR 1506.6.

4. *We believe this also violated the ARA and NEPA. See, e.g., 40 CFR § 1501.7(a) (1) [federal agencies must “Invite the participation of ... interested persons (including those who might not be in accord with the action on environmental grounds)”. [Footnote 3: When our attorneys pointed out this omission in pleadings filed in the matter of The Ark Initiative v. Tidwell, Civ. No. 12-1467 (DDC 2012), the USFS responded that it had published notices in the Federal Register and this was sufficient to alert TAI and invite its participation. However, in cases involving an EIS, the ARA explicitly instructs the agency to notify interested persons and publish a notice in the Federal Register. The CEQ regulations also instruct the agency to directly notify “interested persons” during scoping, irrespective of any Federal Register announcement. As noted earlier, we are volunteers and do wildlife advocacy on behalf of TAI in our spare time. We do not have time to review the voluminous Federal Register publications to look for USFS proposals that may affect our interests. Instead, we depend on the agency to directly notify us of the availability of draft NEPA documents.]*

Response

The interested parties and public were notified in accordance with 40 CFR 1506.6.

5. *If the agency were to propose carving a 20-40 foot wide strip clearcut a half-mile across an inventoried roadless area -- and use a bulldozer to level the surface and create an access for motorized vehicles -- this would require preparation of an EIS. This is tantamount to what the agency is intending to do with the proposed Burnt Mountain egress trail. The ski trail described under Alternative 2 would become the equivalent of a wide permanent winter road used by grooming machines and snowmobiles.*

Response

The Forest Service does not determine the necessity of an EIS based on general project descriptions, such as what this commenter has referenced. Rather, as stated on page 1-7 of the EA, the Forest Service determined through a review of context and intensity factors specified in 40 CFR 1508.27 that an EA is sufficient to document the environmental and social impacts of the project.

6. *It appears the USFS is trying to use the CRR to avoid preparing an EIS when the agency seeks to authorize new ski trails and other developments within roadless lands that happen to occur within ski areas. Indeed, 36 CFR § 294.41 states that “Colorado Roadless Areas established by this subpart shall constitute the exclusive set of National Forest System lands within the State of Colorado to which the provisions of 36 CFR § 220.5(a)(2) shall apply” (emphasis added). 36 CFR § 220.5(a)(2) reads: “(a) Classes of Actions Normally Requiring Environmental Impacts Statements -- (2) Class 2: Proposals that would substantially alter the undeveloped character of an inventoried roadless area or a potential wilderness area.” Hence, under the CRR, the agency will normally not prepare an EIS for any ski area development that would affect the 8,300 acres of previously inventoried roadless areas that have been removed from the inventory by way of the CRA maps. This appears to be an attempt to circumvent NEPA. In the present case, the USFS is implicitly relying on this provision to avoid admitting the proposed egress trail would impact roadless lands, which would otherwise require preparation of an EIS under the national Roadless Area Conservation Rule. See, e.g., DEA at 3-21 (“The action alternatives would not affect the nine roadless area characteristics to the point of altering the characteristics of the Burnt Mountain CRA”) and DEA at 3-23 (“The action alternatives are not anticipated to affect the unique characteristics of the Burnt Mountain CRA”).*

Response

Page 3-9 of the EA states, “...the 2012 Colorado Roadless Rule eliminated the roadless designation for 8,300 acres in 13 existing ski area SUPs and forest plan management allocations for developed ski areas.” Page 3-13 of the EA states, “Between 2007 and 2012 an environmental impact statement (EIS) was prepared to fulfill the Forest Service’s requirements under NEPA.<sup>1</sup> A notice of availability for the Final EIS was published in the Federal Register on May 4, 2012...The 2012 Colorado Roadless Rule includes an updated inventory that added high-quality roadless acres not protected by the 2001 Roadless Rule.”

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<sup>1</sup> The Final EIS for *Rulemaking for Colorado Roadless Areas* relied upon roadless area inventories conducted for both the 2001 Roadless Rule and 2002 WRNF Forest Plan Revision.

Because the 2012 Colorado Roadless Rule (CRR) eliminated the roadless area designation with ski area special use permit areas, page 3-17 of the EA states, “Therefore, the 1,600-acre Burnt Mountain CRA **does not** overlap the Snowmass SUP boundary and the Project Area is not in the CRA.”

The commenter references 36 CFR § 220.5(a)(2). Based on the analysis prepared in this EA, an EIS is not warranted because the proposed action alternatives would not “substantially alter the undeveloped character of an inventoried roadless area...” With this being said, **the Project Area is not located in designated inventoried roadless area or CRA.**

7. *NEPA is concerned about how the environment will change, not about how agencies change administrative labels on maps. Without a full and accurate disclosure of the roadless and wilderness qualities of the affected environment, it is not possible for readers to understand the potential impacts of either action alternative.*

Response

Pages 3-18 through 3-20 of the EA document the roadless qualities of the 80-acre parcel within the SUP area in accordance with the CRA Roadless Area Characteristics.

8. *The DEA (page 1-11) states “The decision will also include a determination of the significance of the effects (a FONSI) and assess the decision’s consistency with the 2002 Forest Plan.” The parenthetical in this sentence implies the USFS has already decided to issue a FONSI, before the Draft EA was completed and before public comments were received and reviewed. A key purpose of the EA is to determine if any potential impacts may be significant, in which case an EIS would need to be prepared. It is inappropriate to declare a FONSI will be issued before the agency even reviews public comments.*

Response

The information presented in the EA the commenter is referencing is for informational purposes to allow the public to understand the NEPA process. The information presented is not stating that the conclusion was made in the EA that a Finding of No Significant Impact would be achieved.

9. *Page 1-10 of the DEA states: The Snowmass SUP area is within an 8.25 Management Area (Ski Areas–Existing and Potential), which directs: Facilities may be intensively used throughout the year to satisfy a variety of seasonal recreational demands. Base areas that serve as entrance portals are designed as gateways to public lands. Forested areas are managed as sustainable cover with a variety of species and age classes in patterns typical of the natural landscape character of the area. Protection of scenic values is emphasized through application of basic landscape aesthetics and design principles, integrated with forest management and development objectives. This does not support either action alternative. The existing condition is fully consistent with this Forest Plan direction, which only states that ski areas (MP 8.25 lands) “may” be intensively managed, but that “Protection of scenic values is emphasized.”*

Response

Simply stated, the proposed egress trail is clearly consistent with Management Area 8.25 (*Ski Areas – Existing and Potential*) direction, which allocates the lands to be used as ski areas. Additionally, a scenery resources assessment was prepared (EA, p. 3-5) to disclose the impacts to this resource and a rationale for why the resource is not carried forward into detailed analysis in Chapter 3 of the EA.

10. *It is not true that there would be “no measurable effects to these resources [air quality, environmental justice, social and economic resources, noise and special designations such as wilderness].” Nor is it true that they were analyzed in the 2006 EA. In particular, ASC estimated this one project would draw more skiers to the Snowmass Ski Area and yield additional revenues of approximately \$1.32 million during the 2012-13 ski season alone. See September 10, 2012 Declaration submitted as an exhibit in the matter of The Ark Initiative v. Tidwell (D.D.C 2012) by David Perry, Senior Vice President of ASC’s Mountain Division. More skiers will mean more vehicles which will mean more impacts to air quality and more traffic and noise in the Town of Snowmass Village. These impacts are measurable but were not analyzed and disclosed in the 2006 EA. They are relevant because Pitkin County has had on-going problems with traffic and air pollution associated with increasing vehicle use.*

Response

Page 3-5 of the EA, includes a disclosure of traffic analysis related to the proposed project. Because the project would generate negligible traffic, an air quality analysis was not warranted. This is consistent with 40 CFR 1508.9, which describes an environmental assessment as a concise public document that includes brief discussions of the environmental impacts.

11. *Although the Forest Service is aware that TAI and Mr. Duerr have a longstanding and substantial interest in this precise issue, and despite the fact that Mr. Duerr expressly to be put on the Service’s mailing list for NEPA documents pertaining to this matter and was led to believe that he would receive notice, the agency inexplicably failed to provide him with such direct notice when the draft EA was issued. This failure delayed Mr. Duerr’s receipt of the document and has impaired Mr. Duerr’s and TAI’s ability to fully evaluate and contribute to comments on the draft EA. Accordingly, Mr. Duerr and TAI, through counsel, requested that the Forest Service take appropriate action to republish the draft EA, thereby reopening the comment period and effectively curing the failure to provide Mr. Duerr with the direct notice he was led to believe he would receive. The agency, however, has declined to do so.*

Response

As previously stated, Mr. Duerr was not on the mailing list for the EA. Mr. Duerr was on the scoping list; however, during scoping and through the preparation of the EA, the WRNF did not receive a letter or any type of correspondence directly from Mr. Duerr. The WRNF received a letter from Meyer Glitzenstein & Crystal, signed by William S. Eubanks II. The letter states, “We submit the following public comments

on behalf of The Ark Initiative (“TAI”), a 501(c)(3) nonprofit conservation organization, and Donald Duerr in his individual capacity.”

On August 8, 2013, Mr. Eubanks sent an email to the WRNF requesting a copy of the Document. On August 8, an electronic copy of the EA was transmitted to Mr. Eubanks, and Eubanks confirmed receipt with a “thanks.”

The process used for this project was that if a letter or a request was received by an individual to be included on an individual project mailing, then a notice was not sent. This is consistent with 40 CFR 1506.6. In accordance with 40 CFR § 1506.6, the WRNF made diligent efforts to involve the public in preparing and implementing their NEPA procedures; provided public notice of the availability of environmental documents; mailed notice to those who requested it on *an individual action* (emphasis added); and published project announcements through press releases in papers of local newspapers and other media.

12. *The Service has chosen to utilize an EA to consider and analyze the environmental impacts of this egress trail project, as well as certain alternatives to the proposed action. However, the Service should have, instead, prepared an EIS, because many of the NEPA “significance” factors are implicated by this federal authorization for implementation of ski related activities in an area of public lands previously inventoried as roadless. Thus, the Service’s decision to prepare an EA here, in lieu of an EIS, is contrary to NEPA and its implementing regulations.*

Response

The Forest Service does not determine the necessity of an EIS based on general project descriptions, such as what this commenter has referenced. Rather, as stated on page 1-7 of the EA, the Forest Service determined through a review of context and intensity factors specified in 40 CFR 1508.27 that an EA is sufficient to document the environmental and social impacts of the project.

13. *40 C.F.R. § 1508.27(b)(2) – This factor is triggered where the proposed action will affect “public health or safety.” The construction of the egress trail, in conjunction with significantly expanded ski-related activities on the Burnt Mountain Glades, will very likely cause an increase in skiers on Burnt Mountain and, in turn, result in a more congested skiing experience creating more injuries and presenting a safety risk to skiers. Indeed, ASC’s Senior Vice President David Perry has testified under oath that ASC “conservatively estimates that 100 incremental guests per day will specifically visit Snowmass to ski the new Burnt Mountain terrain during the 2012-2013 ski season,” which “translates to 12,000 recreation visits over the 120 day period that Aspen Skiing anticipates that the Burnt Mountain terrain will be open for skiing.” See Attachment A to Exhibit 1. Accordingly, because the construction of this egress trail implicates skier safety concerns at Burnt Mountain, an EIS is warranted to fully analyze those impacts.*

Response

The commenter does not agree with the findings identified in Chapter 3 Section B – Recreation. Page 3-29 of the EA states,

“Providing improved egress is likely to increase the number of people skiing the Burnt Mountain Glades and the number of trips skiers make within the glades, which may indirectly impact the recreational experience on the Burnt Mountain portion of the SUP area mainly due to a slight increase in compacted snow conditions. The Burnt Mountain Glades currently comprise approximately 250 acres of intermediate to expert terrain. Typically gladed, expert terrain is designed to accommodate approximately 0.5 skier-per-acre, on average.<sup>2</sup> Given that skier visitation is not contemplated to measurably increase overall, it is not anticipated that foreseeable skier usage in the Glades will exceed the designed skier density. Snowmass is committed to providing a low density skiing experience.”

40 C.F.R. § 1508.27(b)(2) directs the Forest Service to consider “the degree to which the proposed action affects public health and safety.” As stated in the EA, the terrain would continue to be a low density (skiers/acre) skiing experience.

14. *40 C.F.R. § 1508.27(b)(3) – This factor is triggered where the proposed action will affect “[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.” (Emphasis added). This egress project is certain to fragment and otherwise adversely impact an “ecologically critical area” on Burnt Mountain, which serves as habitat and also a key wildlife linkage corridor for federally listed lynx, and many other species such as elk. Indeed, because the Service has previously recognized that this 80-acre parcel satisfies the roadless criteria and added it to the agency’s roadless inventory (meaning that the parcel has unique ecological resources defined at 36 C.F.R. § 294.41 and USFS Handbook 1909.12, Chap. 70), there is no question that this factor is triggered and that an EIS is necessary to examine the impacts to the parcel’s ecological resources that led to it becoming an inventoried roadless area in the first instance.*

Response

The Proposed Action would clear 2.5 acres of overstory vegetation. Alternative 3 would clear 0.8 acre of overstory vegetation and would “glade” 4 acres of overstory vegetation. As page 3-44 of the EA states, “This relatively small amount of habitat loss would not preclude lynx movement and foraging capability across the ski area, nor across the Lynx Analysis Unit. Following trail construction, skier use patterns would be similar to those that currently exist within the area.”

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<sup>2</sup> According to typical ski area planning desired density calculations.

15. *40 C.F.R. § 1508.27(b)(4) – This factor addresses “[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial.” Because this project will adversely affect federally listed lynx and other animals, including by fragmenting their already limited habitat, and will also facilitate an expansion of skiing that will encroach on a Congressionally designated wilderness area (the Maroon Bells- Snowmass Wilderness Area adjacent to Burnt Mountain), the IBMRA, and the solitude that the public experiences in those peaceful areas, this project is “highly controversial” as that phrase is defined under NEPA and warrants preparation of an EIS.*

Response

The WRNF does not believe the effects on the quality of the human environment to be “highly controversial” for three primary reasons:

- Four oppositional letters were received by the public during the 30-day comment period; however, the arguments raised in two of the letters contained numerous substantive comments.
- The substantive comments raised by the opposition are in many regards beyond the scope of this analysis and challenging statements made by qualified biologists and Forest Service specialists.
- Many of the comments raised by the two letters contained subjective statements over the “quality” of an 80-acre parcel that is no longer designated roadless.

16. *40 C.F.R. § 1508.27(b)(6) – This factor addresses “[t]he degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.” The Burnt Mountain Egress Project apparently will serve as the first-ever NEPA analysis and project implementation of a ski-related construction activity in a roadless area that was removed from the Service’s roadless inventory by the July 3, 2012 CRR. Thus, because this project and the agency’s analysis of the environmental impacts (particularly with respect to the long-term loss of this land to wilderness eligibility for Congressional designation) has immense precedential value in terms of the legal and regulatory mandates that apply to the 8,260 acres that have long been in the roadless inventory but have only recently been removed from the inventory by the CRR, project authorization and an accompanying NEPA analysis here would set an agency-wide precedent for authorizing site-specific ski-related construction activities in formerly inventoried roadless areas (and, indeed, areas that are still, as a factual matter, roadless and satisfy the agency’s roadless criteria). Accordingly, this factor is implicated.*

Response

The precedent was set by the CRR, which eliminated the roadless area designation with the SUP area. This project is consistent with NEPA, and similar projects have occurred on NFS lands since NEPA was enacted.

17. 40 C.F.R. § 1508.27(b)(7) – *This factor is triggered if “the action is related to other actions with individually insignificant but cumulatively significant impacts; [s]ignificance exists if it is reasonable to anticipate a cumulatively significant impact on the environment.” The Burnt Mountain egress trail project, in conjunction with other ski related activities undertaken by ASC on Burnt Mountain specifically (e.g., the 2012 glading project and the consequent significant increase in skier congestion on Burnt Mountain) and in the Snowmass Ski Area generally (e.g., the construction of Base Village and other projects aimed at increasing skier numbers and thus resulting in more resource use, air emissions from traffic, and other environmental impacts on the local environment), will have a cumulatively significant impact on wildlife and other natural resources of this area. This concern is magnified by the fact that the Service’s 1994 EIS and ROD for the Snowmass Ski Area Master Plan required certain monitoring of air emissions and mitigation to ensure that an increase in skiers to the Snowmass Ski Area would not exceed the traffic volume cap set for the Town of Snowmass Village – measures that do not appear to have been undertaken by the Service or ASC since that time, nor have they been publicly demonstrated to have been adequate to achieve their intended goals. Thus, there are serious cumulative impacts that must be considered in a more detailed EIS.*

Response

Cumulative impact is the impact on the environment, which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. (40 CFR § 1508.7) Cumulative effects are analyzed in each resource section of Chapter 3 with anticipated direct effects. The action alternatives’ impacts, when compared to the No Action Alternative, do not raise to a level of significance to resources due to the scope and scale of the action alternatives.

18. 40 C.F.R. § 1508.27(b)(9) – *This factor addresses “[t]he degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.” The Burnt Mountain egress trail project will inevitably involve some tree cutting and the construction of a new swath at least 30-40 feet wide for more than 3,100 feet on Burnt Mountain in order to create a groomable ski/snowboard trail. These activities will create new forest edge and substantially fragment the remaining habitat on Burnt Mountain which is used by federally protected Canada lynx. As the expert state wildlife agency (Colorado Department of Natural Resources, Division of Wildlife) has previously explained to the Service, “[t]he project would disturb or alter . . . habitat identified by the U.S. Forest Service as lynx winter habitat and winter forage habitat.” See Attachment B to Exhibit I. As that agency further explained, “Burnt Mountain, which lies on the eastern side [of the Snowmass Ski Area], is not currently fragmented,” but cutting the egress trail “will add to lynx habitat fragmentation.” *Id.* (emphasis added). Thus, there is no question that the Service’s authorization of this project will, in*

*fact, “adversely affect an endangered or threatened species or its habitat,” by resulting in various alterations to lynx winter and foraging habitat that will cause harassment, harm, and other forms of take prohibited by the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531- 1544 without express authorization. [Footnote 4: Indeed, the 2013 Draft EA itself acknowledges (at 2-9) that “[d]ue to proposed trail construction, there would be a loss of some lynx habitat,” which reinforces the need to prepare an EIS so that the full range of the direct, indirect, and cumulative effects on lynx can be analyzed. By the same token, the concession that “some” lynx habitat will be irretrievably lost also requires the Forest Service to pursue formal consultation with the U.S. Fish and Wildlife Service pursuant to section 7 of the ESA.]*

### Response

The Selected Alternative will have no significant adverse effect on any federally listed threatened, endangered or proposed plant or animal species. Under Alternative 2 there would be a loss of approximately 2.5 acres of lynx habitat due to the construction of the trail. This relatively small amount of habitat loss would not preclude lynx movement and foraging capability across the ski area, nor across the Lynx Analysis Unit. Under Alternative 3, conifer vegetation would be gladed and a shorter and narrower linear egress trail than Alternative 2 would be constructed. There would be a loss of approximately 0.8 acre of conifer vegetation due to the construction of the trail, an additional 4 acres gladed, and select trees cleared, all of which would occur in lynx habitat. The glading would remove approximately 60 to 75 percent of the vegetation within the 4-acre area which equates to clearing of approximately 2.4 to 3 acres. In total, the clearing of lynx habitat under this alternative would be approximately 3.2 to 3.8 acres. This small amount of habitat loss would not preclude lynx movement and foraging capability across Snowmass, nor across the Lynx Analysis Unit. The action alternatives are consistent with all applicable lynx-related provisions of the Southern Rockies Lynx Management Direction and the associated FEIS/ROD, as well as with Section 7(d) of the Endangered Species Act.

19. *Perhaps even more concerning is the Service’s failure to reasonably identify the physical scope of the project. It is difficult, if not impossible, to discern from the 2013 Draft EA just what the proposed action will encompass. The Service “incorporate[s] by reference” no fewer than eight external documents, including, inter alia, an over 1,000-page EIS from 1994 and an accompanying ROD, a Snowmass Master Development Plan from 2003, and a 2006 Environmental Assessment. Complicating the recurring cross-references are the Service’s frequent failures to cite to specific pages of or provisions from these lengthy documents. Although the 2013 Draft EA refers time and again to the proposed action alternatives’ respective effects on past, present, and “reasonably foreseeable” future projects, actions, and developments in the 2003 MP, see, e.g., 2013 Draft EA at 3-7, 3- 32, there are generally few if any details given as to which future projects from the 2003 MP the 2013 Draft EA refers. [Footnote 5: Some of the many possible future endeavors identified in the 2003 MP include: a Burnt Mountain Lift; several additional Burnt Mountain trails including “gladed skiing from top to bottom” (also referenced in the 2013 Draft EA at 3-32); new Burnt*

*Mountain service roads; and, a gondola connecting Tiehack Ski Area (“Buttermilk”) to Burnt Mountain.]*

Response

The alternatives considered in detail are described on pp. 2-1 through 2-3 of the EA. Incorporating by reference is common in NEPA projects, and this EA appropriately does so to provide a concise analysis.

**B. ROADLESS**

20. *The discussion of the Colorado Roadless Rule in the EA overlooks and neglects to specifically point out that the ASC special use permit for Snowmass Ski Area is grandfathered under the Colorado Roadless Rule, 36 C.F.R. § 294.48(a), because the 1995 permit was issued before the 2012 effective date of the Colorado Roadless Rule. The EA contains a thorough and helpful discussion of the 2001 Roadless Rule and the Colorado Roadless Rule. The EA appropriately notes in several places that if the 80-acre tract on Burnt Mountain was designated roadless under the Colorado Roadless Rule, the Forest Service may authorize timber removal for the Egress Trail because such timber removal is incidental to “a management activity not otherwise prohibited” developed skiing inside the Snowmass Ski Area special use permit. EA at Table 2-2, 3-14, 3-24. That is consistent with the Colorado Roadless Rule. See 36 C.F.R. § 294.42(b). However, the EA overlooks another provision of the Colorado Roadless Rule that is also applicable. Ski area special use permits issued before 2012, like ASC’s 1995 special use permit for Snowmass Ski Area, are grandfathered, and may not be revoked, suspended, or modified by the Colorado Roadless Rule. 36 C.F.R. § 294.48(a). Specifically, that provision states “This subpart does not revoke, suspend, or modify any permit, contract, lease, or other legal instrument authorizing or granting rights to the occupancy and use of National Forest system lands issued prior to July 3, 2012 .... “ 36 C.F.R. § 294.48(a). The Forest Service should add the grandfathering provision to the discussion of the Colorado Road less Rule in the EA because it applies to ASC’s 1995 special use permit for Snowmass Ski Area. The practical effect is that even if the 80-acre parcel on Burnt Mountain was designated as a Colorado Roadless Area, under the Colorado Roadless Rule such a designation cannot be a basis to “revoke, suspend, or modify” ASC’s Snowmass Ski Area special use permit for the same terrain on Burnt Mountain. 36 C.F.R. § 294.48(a). That means that the timber removal limitations and road-building provisions of the Colorado Roadless Rule cannot be applied inside the ASC Snowmass Ski Area special use permit even if lands inside the permit are designated as a Colorado Roadless Area. The grandfathering provision of the Colorado Roadless Rule is relevant to the discussion of the same rule in Table 2-2, and to the discussion on pages 3-14, 3-16, and 3-24. The EA overlooks that under the grandfathering provision, the Colorado Roadless Rule cannot affect ski area special use permits issued before adoption of the Rule. The 2001 Roadless Rule has a similar provision that grandfathers ski area special use permits issued before adoption of the 2001 Roadless Rule. See 36 C.F.R. § 294.14(a).*

Response

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>3</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

36 CFR § 294.48(c) states, “The provisions set forth in this subpart provide the maximum level of tree cutting, sale and removal, and road construction and reconstruction activity allowed within Colorado Roadless Areas.” 36 CFR § 294.42 provides prohibitions on tree cutting, sale and removal.

21. *The problem is all these claims are entirely unsupported. As far as we can tell, the USFS did not conduct any site-specific analysis on the 8,300 roadless acres to determine that they have been “degraded.” If such an analysis was done, what definition of “degraded” was used by the agency? What measurable criteria did the agency use to evaluate lands for “degraded” condition? How did these criteria comport with the agency’s roadless inventory criteria, which were subject to rule-making? Did the agency do any noise or visual disturbance measurements in those areas? What distance threshold did the agency use to gauge “proximity” to a ski resort or other development alleged to have “degraded” roadless qualities? Where are the analyses to show actual distance from a ski resort or other development to various parts of these previously inventoried roadless areas? Did agency personnel visit the 8,300 acres to determine if ski resort developments could be seen from those acres? What type of actual field inspections did the agency do to judge that these acres were all degraded? What reports or evidence did the agency rely up on to conclude the existing conditions of these 8,300 acres would “continue to conflict with visitor expectations” that inventoried roadless areas should be “substantially unroaded and undeveloped”?*

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<sup>3</sup> USDA Forest Service, 2012a Decision Rationale

Response

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>4</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

22. *It appears the agency merely assumed that if public lands included in a prior roadless inventory happened to fall within an arbitrary ski area permit boundary then they were degraded by proximity to the ski resort. This is an indefensible and invalid assumption. Most obviously, it cannot be true that every single square inch of previously inventoried roadless lands that happen to occur within the permitted ski area boundaries in Colorado are so degraded that they no longer satisfy the agency’s roadless criteria. Indeed, it would be a coincidence of unimaginable improbability if the zone of true “degradation” extended precisely up to the very edge of a ski area boundary -- on public lands where no prior ski area development had ever occurred -- while every square inch of identically inventoried roadless lands immediately outside the same boundary is suffering no similar degradation and could therefore remain in the inventory under the CRR. Moreover, the very fact that all 8,300 acres of these lands had been studied by the USFS during a prior inventory (e.g., WRNF Forest Plan Revision) and found to fully possess the qualities of roadless areas indicates the agency was not telling the truth when it asserted in the CRR preamble and DEIS and FEIS that these very same lands had somehow become degraded and needed to be removed from the CRA roadless inventory, lest those lands “continue to conflict with visitor expectations” that inventoried roadless areas should be “substantially unroaded and undeveloped.” If, between the prior roadless inventories and the CRR roadless inventory, the USFS did allow these areas -- over 12 square miles of inventoried roadless lands -- to become degraded by ski area operations in Colorado to the point where these lands no longer satisfy the roadless criteria, then where are the Environmental Impact Statements to disclose the resulting impacts and irreversible commitments (e.g., loss of Wilderness*

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<sup>4</sup> Ibid.

designation opportunities) to the public? The agency is not allowed to let private corporations degrade roadless lands -- lands which are of immense ecological value and are highly valued by millions of citizens -- without at least a NEPA disclosure and public debate (including appeal opportunities) on whether such degradation should be allowed. Neither the EIS prepared on the Snowmass Ski Area Master Plan, nor the 2006 EA on the Master Plan Amendment, discloses any such impacts or loss of roadless qualities from ASC activities on the WRNF. Nor does any other NEPA document. In particular, there is no evidence that the 80-acre parcel of previously inventoried roadless land -- where ASC wants to cut the egress trail -- has any degradation at all. On the contrary, the July 16, 2012 Petition we filed with the Chief of the USFS presented undisputed evidence that this parcel, along with roughly 1,000 acres of other lands on Burnt Mountain located east of the Long Shot ski run, have not been degraded and still meet all of the agency's roadless criteria. I have done roadless inventory work on National Forest lands for more than two decades, using the USFS roadless inventory criteria. I have hiked throughout that 80-acre parcel and found nothing that might constitute "degradation" sufficient to disqualify the parcel from inclusion in the roadless inventory. Last year I also examined the parcel using high-resolution satellite images and could find no evidence of developments that might be considered to have "degraded" its roadless qualities and rendered ineligible for inclusion in the roadless inventory. Due to the dense forest and topography, I could see no signs of ski resort development from the parcel. I have also interviewed backcountry skiers who frequent this parcel during ski season and they reported there is no noise or visual disturbance that might degrade the area. They ski in this area precisely because it currently offers a wild, natural backcountry experience. This is also evident from a statement in the DEA which acknowledges that under Alternative 1 -- the No Action Alternative which represents the existing condition of the parcel without any egress trail "improvement" -- There is little evidence of ski area operations and maintenance in the area, and the natural qualities would be maintained under Alternative 1. The low density skier experience is valued. DEA at 2-8, Table 2-2. See also DEA at 3-18 ("No projects or developments have occurred within the 80-acre area") and DEA at 3-19 ("the 80-acre area provides a semi- primitive, non-motorized recreational experience" and "Due to the lack of historic development and disturbance, the 80- acre area exceeds the area's designated SIO of Low," i.e., it has experienced less than "moderate" alteration). Because this 80-acre parcel currently shows little evidence of ski area operations -- and offers natural qualities with little skier use -- it is clear that it has not been "degraded" by proximity to the Snowmass ski resort, as the USFS claimed when it removed this parcel from the roadless inventory through the CRA maps. If this parcel were left in the roadless inventory, how could its existing condition possibly "conflict with visitor expectations" that roadless areas should be "substantially unroaded and undeveloped"?

Response

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>5</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA. The Project Area does not provide a “backcountry experience,” as it is within in the SUP operational boundary and patrolled.

23. *After we filed our July 16, 2012 Petition asking the USFS to include all the omitted roadless lands on Burnt Mountain in the CRA roadless inventory, Chief Tidwell did not present any records or evidence to show that these lands have been degraded. Instead, Mr. Tidwell denied our petition by asserting that the CRR “excluded” all roadless lands from ski area boundaries. This argument is also erroneous. For one thing, there is no language in the CRR itself that says roadless areas are excluded from overlapping ski areas. For another, this assertion is directly refuted by the Draft EIS and Final EIS on the CRR which both contain statements indicating the USFS anticipated that ski area boundaries and CRA roadless areas can overlap under this rule. For instance, page 234 of the CRR DEIS makes the following public disclosure about the proposed rule: In the future, if the Forest Service authorizes a ski permit boundary to expand into a CRA, road construction could not occur on those CRA acres. \* \* \* Such ski area expansions without road construction could take place in upper tier acres as well as in regular CRA acres. (Emphasis added.) Pages 253-4 of the CRR Final EIS contain a similar disclosure about the application of the final rule to ski areas: Similar to Alternative 1, ski area development could occur without road construction [under Alternative 2, the Final CRR]. It would be permissible to cut trees incidental to implementing a permitted, ski-area management activity, not otherwise prohibited in a CRA. Such ski area expansions without road construction could take place in upper tier acres as well as in regular CRA acres. (Emphasis added.) In light of the fact that the agency clearly anticipated that permitted*

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<sup>5</sup> Ibid.

*ski areas and roadless areas (CRAs) could overlap under the CRR, it is no wonder that the rule itself contains no provision that would prohibit or exclude such overlaps.*

Response

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>6</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

24. *For these reasons, it is our position that the agency’s decision to remove these 8,300 acres from the nation’s roadless inventory was arbitrary, capricious or an abuse of discretion. This includes the 80-acre parcel where the USFS is now proposing to authorize the “improved” egress traverse trail on Burnt Mountain. If the removal of this parcel from the roadless inventory was arbitrary, capricious or an abuse of discretion, it is inappropriate for the USFS to rely on that unlawful removal in its efforts to authorize the proposed egress trail.*

Response

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired

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<sup>6</sup> Ibid.

conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>7</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

25. *The DEA (page 3-24) asserts: The environmental analysis presented within this EA fulfills the Forest Service’s obligations for site-specific NEPA analysis of the 80-acre portion of the Burnt Mountain SUP area that was formerly within the Burnt Mountain IRA. This is untrue for two reasons. First, among other impacts it ignores, the DEA does not honestly disclose the loss of roadless or wilderness qualities and does not honestly disclose the irreversible foreclosure of Wilderness designation options. And second, because these impacts are significant, they cannot be presented in an EA but must be presented in an EIS. The USFS will not “fulfill [its] obligations for site-specific NEPA analysis” until it prepares an EIS and makes the required disclosures.*

Response

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>8</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA. Page 3-13 of the EA states, “Appendix C of the 2002 Forest Plan Final EIS discusses roadless area management and recommended wilderness on the Forest. Only those roadless areas that were found to be capable of and available for wilderness recommendation are included in this appendix. The inventoried roadless areas that were either ‘capable and not available’ or ‘not capable and not available’ are listed in Table C-3 of Appendix C. *As a result of the WRNF’s 1997 roadless area inventory evaluation for the Forest Plan*

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

revision process, the Burnt Mountain IRA was identified as 'not capable and not available' for wilderness recommendation.<sup>9</sup>

26. *The DEA contains over 20 pages of discussion on Roadless Areas. DEA at 3-9 through 3-33. However, most of these pages discuss the Burnt Mountain CRA and the history of roadless area management in the United States and Colorado -- topics which have nothing to do with the questions of whether the 80-acre parcel has roadless and wilderness qualities or whether the action alternatives would impact these qualities. The DEA devote 3 pages (3-17 through 3-20) to describing the Affected Environment on the 80-acre parcel "in relation to the Burnt Mountain CRA." This includes a listing of the 9 characteristics that are "often present in CRAs." Remarkably, after acknowledging that the parcel possesses some of these characteristics -- including the characteristic that "No projects or developments have occurred within the 80-acre parcel," that it offers a "semi-primitive, non- motorized" recreational experience, and that it provides habitat for ESA threatened species -- the DEA fails to present a conclusion as to whether or not this parcel is "roadless" under the CRR criteria. It also fails to evaluate whether the parcel would be roadless under the national Roadless Area Conservation Rule (which would be in effect if the CRR is nullified by a court of law) or under the historic roadless criteria published in FSH 1909.12.*

#### Response

As stated on page 3-15 of the EA,

"The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado."<sup>10</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

27. *Several of the DEA's discussions on the 9 CRA characteristics are also erroneous. For instance, Page 3-18 of the DEA states that area proposed for disturbance contains "no waters ... including*

<sup>9</sup> Ibid. Appendix C, p. 11

<sup>10</sup> USDA Forest Service, 2012a Decision Rationale

wetlands,” but the very next page states that the parcel has habitat for four species of endangered fish and other water-associated species such as the Colorado River cutthroat trout, boreal toad and northern leopard frog. The problem here is the DEA focused the wetland and water discussion on the area “proposed for disturbance” which is not the same as the entire 80-acre parcel which does contain wetland habitat (though the DEA fails to disclose this on any of its project area maps).

Response

Page 3-19 of the EA made an erroneous statement regarding Threatened, Endangered and Proposed Threatened species to be consistent with the analysis presented on page 3-35 of the EA that identifies that the analysis area includes habitat for only Canada lynx and the other seven identified species do not have habitat present and/or their range of distributions do not include the analysis area. In addition, brewer’s sparrow, mountain sucker and Colorado River cutthroat trout do not have habitat present. Refer to the Errata.

There are wetlands present in the 80-acre roadless area, namely kettle pond at the top of the parcel. The pond is located at the top of the ridge from where the Egress Trail would descend. There is habitat for toads and frogs in the pond, but no habitat for fish. The egress trail would not impact this pond or any other wetland.

The 2004 BE (prepared for the 2006 and located in the Project File) addressed the Project Area for that project. The 2004 BE determination for boreal toad and northern leopard frog disclosed:

The pond and willow community that exists at the bottom of the skiable portion of Burnt Mountain provides potential habitat for the Boreal Western Toad and Northern Leopard Frog. There would be no impact to these habitats as a result of the proposed Burnt Mountain projects. The Burnt Mountain traverse would cross the drainage channel approximately 150 feet below the pond, in an area relatively devoid of riparian vegetation. Forest vegetation would be cleared at this point, however understory vegetation would not be damaged. There would be no increase in sediment delivery to the drainage since soil would not be disturbed during vegetation clearing. Therefore, for all of the proposed projects, there would be **no impact** on northern leopard frogs.

Following the breeding season, individual boreal toads have been recorded to have traveled up to 2.5 miles from breeding areas to sites within spruce-fir or lodgepole pine forests (Loeffler 2001). Consequently, the potential exists that upland activities associated with the Big Burn chairlift installation, Burnt Mountain trail construction, and/or upland grading associated with construction of the Burnt Mountain Traverse, could disturb or crush and kill toads that breed in habitats outside of the analysis area and hibernate within mixed conifer stands. Therefore, for the boreal toad, the proposed Burnt Mountain project **may adversely impact individuals, but would not likely result in a lack of viability in the planning area, nor cause a trend towards Federal listing or a loss of species viability rangewide.**

That determination is still correct, in that there will be no direct disturbance of wetlands, so no impact to northern leopard frog. The boreal toad could be impacted by equipment during construction, due to the toad's propensity to migrate up to 2 miles from wetlands in order to hibernate in non-wetland forested areas. There are toads known from anywhere within or directly adjacent to the 80-acre site or anywhere within the Snowmass SUP Area. The 2013 EA states accurately that there will be no impact to fish.

28. *The DEA also asserts (page 3-19) that due the 80-acre parcel's "proximity to developed portions of the Snowmass SUP area and private land development, its potential to be a reference landscape is limited." This is incorrect. Beyond the fact that it contradicts other admissions in the DEA -- such as the fact that this parcel is "natural," contains no roads, and has never been developed -- the 80-acre parcel is farther away from private lands and developed portions of the Snowmass SUP area than lands which the USFS decided to leave in the Burnt Mountain CRA. In addition, the 80-acre parcel is indistinguishable from the adjacent lands left within the CRA; when you hike through this part of the WRNF you cannot tell whether you are in the Burnt Mountain CRA or the 80-acre parcel. In short, the 80-acre parcel has the same natural characteristics of a reference landscape as the adjacent CRA and nearby Wilderness.*

Response

Reference landscapes can provide comparison areas for evaluation and monitoring. These areas provide a natural setting that may be useful as a comparison to study the effects of more intensely managed areas. The WRNF's disclosure of the Reference Landscapes characteristic is disclosed on page 3-19.

Page 3-13 of the EA states, "Appendix C of the 2002 Forest Plan Final EIS discusses roadless area management and recommended wilderness on the Forest. Only those roadless areas that were found to be capable of and available for wilderness recommendation are included in this appendix. The inventoried roadless areas that were either 'capable and not available' or 'not capable and not available' are listed in Table C-3 of Appendix C. *As a result of the WRNF's 1997 roadless area inventory evaluation for the Forest Plan revision process, the Burnt Mountain IRA was identified as 'not capable and not available' for wilderness recommendation.*"<sup>11</sup>

29. *The discussion on the characteristic of "Natural-Appearing Landscapes with High Scenic Quality" (DEA at 3-19 and 3-20) is similarly incorrect and misleading. Rather than discussing the actual natural condition and scenic quality of the 80-acre parcel, the DEA focuses entirely on the "Scenic Integrity Objective" (SIO) the USFS allocated for the area in the 2002 Revised Forest Plan. The SIO is an objective, not an existing condition. The SIO objective is "Low" which means moderate alteration of the area is allowed without violating the SIO objective. Crucially, however, this does not mean the area has already suffered moderate alteration. In fact, the DEA admits that this 80-acre area has never before been developed, which means it currently is substantially unaltered. The parcel clearly has the characteristics of a "natural- appearing landscape" with high scenic*

<sup>11</sup> Ibid. Appendix C, p. 11

*quality” ... and it has the same naturalness and scenic qualities as the adjacent Burnt Mountain CRA and nearby Wilderness.*

Response

Page 3-19 discloses the existing condition by stating the 80-acre parcel exceeds the SIO of “Low” due to a lack of historic development.

30. *In an apparent attempt to downplay the natural qualities of the parcel, the DEA states that “Glading has occurred uphill of the Project Area and trail construction and lift installation has occurred downhill of the Project Area.” DEA at 3-19. What the DEA conveniently fails to mention is that the lift installation and trail construction that occurred downhill are much farther away from the parcel than from parts of Burnt Mountain which the USFS decided should stay in the CRA roadless inventory. The USFS also informed us during the litigation in the matter of The Ark Initiative v. Tidwell, Civ. No. 12-1467 (DDC 2012) that a very small number of mature trees were being removed during the glading on the lands uphill from the 80-acre parcel and that this limited tree removal would not affect roadless qualities.*

Response

The information presented on page 3-19 is describing the Project Area in context with the surrounding environment, which includes a developed ski area and the Snowmass SUP area. The 80-acre parcel being described is within Snowmass SUP area and is not located within a designated CRA.

31. *The DEA (page 3-18) also asserts “development has occurred on lands within the SUP area adjacent the 80-acre area (within the developed ski area).” This too is inaccurate. The 80-acre parcel is not “adjacent to” the developed ski area. Most of this parcel is located more than a 1/2 mile away from the nearest ski area development (the Long Shot ski run) and is even farther away from the nearest road, nearest building and nearest ski lift.*

Response

The Burnt Mountain Glades that were developed in 2012 are considered a part of the “developed ski area.” The 80-acre parcel and the proposed project are clearly adjacent to the Burnt Mountain Glades.

32. *In the discussion on “Other Locally Identified Unique Characteristics” the DEA (page 3-20) also fails to disclose the unique and important characteristics that were identified by the agency when it included the parcel in the Burnt Mountain IRA up to July 2012. This includes the importance of Burnt Mountain to the resident elk herd, for both migration and calving. The CRA description of Burnt Mountain states that “Alternative migration corridors do not exist for this population.” The DEA also fails to explain that this face of Burnt Mountain is the last remaining undeveloped patch of habitat of any significant size between Aspen and Snowmass.*

Response

Page 3-20 of the EA discloses that the 80-acre parcel provides habitat for elk migration and elk production. The EA (pp. 3-17 and 3-18) discloses that the Burnt Mountain CRA is now 1,600 acres in size and would provide the primary habitat and range for most wildlife species that may be present in the area.

33. *It seems the agency believes that just because it administratively removed the 80- acre parcel from the official CRA roadless inventory -- despite the fact that the area is just as roadless as it was before the glading was done -- this somehow allows the agency to tell people there is no roadless land in the project area; and if the agency says there are no roadless lands, it can tell the public there won't be any impacts to roadless qualities from clearcutting and bulldozing in the parcel.*

Response

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>12</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

34. *Clearcutting and leveling a 20-40 foot wide permanent ski trail across this parcel will render it unnatural with low scenic quality. The DEA incorrectly concludes that either action alternative would have no significant impact on scenic quality because it incorrectly uses the “allowable” SIO of Low as the baseline for assessing the visual impacts ... as if the parcel had already been converted to Low scenic integrity. If the DEA had used the correct baseline of the true existing condition, the agency would have to disclose that both action alternatives would significantly change the character of the parcel from a natural appearing landscape with high scenic quality to a modified landscape with low scenic quality. It is incorrect and deceptive to use SIO for assessing impacts to visual resources.*

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<sup>12</sup> USDA Forest Service, 2012a Decision Rationale

Response

Per the 2002 Forest Plan the SIO of the Project Area is “Low.” Project Design Criteria (PDC) included in the EA would minimize effect to the scenic quality of the area. The project would not have a significant impact to scenery resources and would be consistent with the 2002 Forest Plan.

35. *The DEA (page 3-22) makes the same kind of mistake when it “assesses” (i.e., mentions and dismisses) potential impacts to Primitive, Semi-Primitive Non- Motorized Recreation: “The effects of Alternatives 2 and 3 on primitive, semi- primitive non- motorized and semi-primitive motorized classes of dispersed recreation are not anticipated to be significant.” There is no actual analysis of how the proposed logging would change the character of the recreation experience from the current wilderness- type experience to what would amount to recreating in a clearcut with snowcats and snowmobiles running back and forth. The DEA apparently uses the 2002 Forest Plan Recreation Opportunity Spectrum (ROS) “objective” of semi-primitive non-motorized (SPNM) and then concludes no impacts would occur because this ROS objective would still be met after the logging and earth moving are completed. As with SIO, however, the ROS designation of SPNM is not a disclosure the existing on-the-ground conditions, but is an allowance. The USFS may authorize developments so long as they do not take the area out of the SPNM ROS (e.g., to a “roaded natural” ROS). Assessing ROS compliance is not the same as assessing how the recreation experience will actually change from a proposed development that stays within the bounds of the designated ROS. As with SIO, it is incorrect and deceptive to use ROS compliance for assessing impacts to recreational resources.*

Response

The Project Area is not a Congressionally designated wilderness area and the “wilderness-type experience” is the commenter’s opinion; however, activities currently occur within the Project Area that are prohibited from occurring in a wilderness area (e.g., no commercial enterprise). The Project Area is adjacent to the currently skied Burnt Mountain Glades and currently experiences winter use. The EA presents the affected environmental consequences with respect to this roadless area characteristic. Note, the Project Area is not located within a designated CRA.

36. *Because the DEA starts from the erroneous premise that the parcel already has been degraded and cannot serve as a reference landscape, it reaches the equally erroneous conclusion that clearcutting a wide egress trail across the parcel would not reduce its potential to serve as a reference landscape. If the DEA had started from the correct baseline of the existing condition (affected environment), it would be obvious that either action alternative would significantly change the character of the parcel from a natural (i.e., “reference”) landscape to a developed landscape.*

Response

Reference landscapes can provide comparison areas for evaluation and monitoring. These areas provide a natural setting that may be useful as a comparison to study the effects of more intensely managed areas. The WRNF's disclosure of the Reference Landscapes characteristic is disclosed on page 3-19.

Page 3-13 of the EA states, "Appendix C of the 2002 Forest Plan Final EIS discusses roadless area management and recommended wilderness on the Forest. Only those roadless areas that were found to be capable of and available for wilderness recommendation are included in this appendix. The inventoried roadless areas that were either 'capable and not available' or 'not capable and not available' are listed in Table C-3 of Appendix C. *As a result of the WRNF's 1997 roadless area inventory evaluation for the Forest Plan revision process, the Burnt Mountain IRA was identified as 'not capable and not available' for wilderness recommendation.*"<sup>13</sup>

37. *Such a significant loss of habitat for a threatened species warrants disclosure in an EIS even if the USFS seeks to mitigate the impact. In this case, the approved mitigation is temporary while the proposed egress trail would be permanent. This means the mitigation, to the extent that it does anything at all to offset the loss of lynx habitat, would gradually vanish to leave a permanent, significant and unmitigated loss of lynx habitat. The 2006 EA did not evaluate how the mitigation effectiveness would decline over time. In the context of the roadless question, it is evident there would be a "significant" unmitigated impact in the years ahead, and this would impair the roadless characteristics of the 80-acre parcel in a significant way.*

Response

The disclosure of impacts to lynx habitat with respect to roadless characteristics is presented on pp. 3-21 and 3-22 of the EA.

38. *The DEA also fails to acknowledge that approximately 1,000 acres of WRNF land surrounding the top of the 80-acre parcel are still roadless and adjacent to both the Burnt Mountain CRA and the Maroon Bells - Snowmass Wilderness Area. In our assessment, this larger parcel is eligible for inclusion in the Burnt Mountain CRA -- which is why our July 16, 2012 petition asked the agency to adjust the CRA boundary to include this parcel. As documented in our Petition, this larger parcel is also eligible for future consideration as an addition to the Wilderness Area. However, if either action alternative in the DEA were implemented, the USFS would in all likelihood cite the resulting "proximity" to ski area developments as a reason to disqualify these 1,000 odd acres from the CRA and from Wilderness consideration ... just as it has done with the 8,300 acres it disqualified from the CRA roadless inventory based on the erroneous claim that these lands are degraded by "proximity" to ski resorts.*

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<sup>13</sup> Ibid. Appendix C, p. 11

Response

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>14</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA. Page 3-13 of the EA states, “Appendix C of the 2002 Forest Plan Final EIS discusses roadless area management and recommended wilderness on the Forest. Only those roadless areas that were found to be capable of and available for wilderness recommendation are included in this appendix. The inventoried roadless areas that were either ‘capable and not available’ or ‘not capable and not available’ are listed in Table C-3 of Appendix C. *As a result of the WRNF’s 1997 roadless area inventory evaluation for the Forest Plan revision process, the Burnt Mountain IRA was identified as ‘not capable and not available’ for wilderness recommendation.*”<sup>15</sup>

39. *In addition, the USFS cannot reconcile the contradiction between the DEA’s assertion that neither action alternative would reduce the area’s roadless qualities with the DEA’s admission that the agency disqualifies lands from the roadless inventory that have “facilities for purposes of travel by vehicles greater than 50 inches in width” (DEA at 3-12). A snowcat is clearly a “vehicle greater than 50 inches in width,” and a 20-40 foot wide clearcut with earth moving to accommodate snowcats is clearly a “facility for purposes of travel” by these vehicles. The USFS may not be inclined to call this trail a “road” (see DEA at 3-23: “No roads are proposed in either alternative”), but that is basically what it would be. Consequently, if either action alternative were implemented, the 80-acre parcel would likely be disqualified by the USFS from eligibility to be added to the roadless inventory even though it now has the characteristics of a roadless area.*

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<sup>14</sup> USDA Forest Service, 2012a Decision Rationale

<sup>15</sup> Ibid. Appendix C, p. 11

Response

The reference to page 3-12 of the EA is in regards to the 2002 Forest Plan. The 2012 CRR removed CRAs from ski area boundaries. In doing so, the road definition (a motor vehicle route over 50 inches wide) is no longer applicable to the Project Area.

40. *In response to our requests for the agency to include the upper part of Burnt Mountain east of Long Shot ski run within the inventoried Burnt Mountain Roadless Area, the DEA responds as follows: ... there remains a need for improved access from the Burnt Mountain Glades as the area is no longer within the Burnt Mountain IRA, and no longer characterized as Forest Service backcountry access terrain. Returning the area to the Burnt Mountain IRA is beyond the scope of this analysis. Removing the IRA from the SUP area was analyzed in the Rulemaking for Colorado Roadless Areas EIS. Continued use of this area for managed/patrolled skiing terrain is completely consistent with the SUP, the Forest Plan and the Colorado Roadless Rule. DEA at 2-4. This is also incorrect. For one thing, it is a circular argument to say that because the area is no longer within the CRA roadless inventory the agency cannot consider returning the area to the roadless inventory. For another, simply because other alternatives may be consistent with the SUP, Forest Plan and CRR does not mean this alternative would be inconsistent and need not be evaluated. Contrary to the DEA's implication, the USFS can legally include the entire parcel east of Long Shot within the Burnt Mountain CRA and this would still allow ski trail construction and would still allow for "managed/patrolled skiing terrain."*

Response

As stated on page 3-15 of the EA,

*"The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. The result is that existing ski area special use permit areas are not overlapped by CRAs. The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado."*<sup>16</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA. The six

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<sup>16</sup> USDA Forest Service, 2012a Decision Rationale

primary events described on page 2-4 of the EA contribute to the determination that adding the 80-acre Project Area to the Burnt Mountain CRA is beyond the scope of this EA.

41. *Furthermore, it is not beyond the scope of the analysis to give this area roadless recognition. In fact, we believe the agency will violate NEPA if it fails to accurately describe the affected environment -- which necessarily includes disclosing the roadless qualities of lands even if they are not included in any formal roadless inventory. It would also violate NEPA if the agency fails to accurately describe the environmental impacts of the Alternatives -- which necessarily includes disclosing the irreversible and irretrievable loss of roadless qualities on lands, even if the lands are not included in any formal roadless inventory. In this case, loss of roadless qualities will occur under both action alternatives because they involve clearcutting, earth moving and heavy thinning (up to 40% basal area). The DEA fails to disclose these impacts. Roadless If either of the action alternatives in the DEA are implemented, the option of returning the 80-acre parcel to the Burnt Mountain CRA will be lost. Therefore, this is the last remaining opportunity for the agency to consider this option. The DEA states that even if the parcel were included in the CRA inventory, ski trail construction would still be possible. So the agency should fully consider this option now because the evidence shows this parcel has the characteristics of a roadless area and is indistinguishable from lands the agency did include in the Burnt Mountain CRA. Does the agency believe avoiding disclosure in an EIS is so important that it has to deceive the public about the roadless qualities of public lands?*

Response

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>17</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA. The six

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<sup>17</sup> Ibid.

primary events described on page 2-4 of the EA contribute to the determination that adding the 80-acre Project Area to the Burnt Mountain CRA is beyond the scope of this EA.

42. *The DEA (page 3-16) states that “the 2012 Colorado Roadless Rule provides greater opportunities for ski area development than the 2001 Roadless Rule, except expansions of ski areas into CRAs through plan amendments are not permitted.” This is incorrect. The quotes provided earlier from the CRR Draft and Final EIS both reveal that ski areas can expand into CRAs under application of the CRR. There is nothing in the CRR that would prohibit ski areas from expanding into CRAs, just as there is nothing in the CRR that would prohibit CRA boundaries from being adjusted to overlap ski areas.*

Response

The CRR Final Rule states (77 Fed. Reg. 39594), “Greater opportunity for ski area development and expansion than the 2001 rule. Opportunities similar to forest plans except expansion of ski areas into roadless areas through plan amendments not permitted under the final rule.” This is consistent with the information provided in the EA.

43. *As a subset of the 8,260 acres removed from the roadless inventory by the CRR, the 80 acres where ASC now proposes construction of the egress trail were removed from the Service’s roadless inventory by the CRR. However, while the CRR’s EIS lists the 80-acre IBMRA parcel as an area of public lands removed from the roadless inventory by the CRR, see Final EIS at 254, there is no analysis of whether this 80- acre parcel is in fact degraded and thus appropriate for removal from the roadless inventory, nor is there any site-specific analysis in the CRR EIS of the impact to this 80-acre parcel’s natural resources or its permanent loss of roadless character and wilderness eligibility as a result of removing it from the roadless inventory or allowing the construction of an egress trail and the consequent increase in skier use and congestion.*

Response

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired

conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.<sup>18</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

44. *Compare “no snowmaking exists or is proposed for any terrain on Burnt Mountain,” 2013 Draft EA at 3-4 (emphasis added), with “[t]he action alternatives would include grooming machine and snow machine use within the area,” id. at 3-22(emphasis added).*

Response

The description of alternatives are presented in Chapter 2 of the EA (pp. 2-1 through 2-3). The alternatives do not propose the use of snowmaking.

45. *As explained above, the Service arbitrarily removed an 80-acre parcel of previously inventoried roadless lands on Burnt Mountain from the roadless inventory in the CRR. See 77 Fed. Reg. 39576 (July 3, 2012). That parcel had been continuously in the agency’s roadless inventory since 1997, when the Service deemed the parcel to satisfy the agency’s criteria for roadless protection. The only purported rationale supplied by the Service in the CRR for removing this parcel (and an additional 8,180 acres throughout Colorado) from the roadless inventory, and therefore stripping this parcel of the regulatory protections it has long had from precisely the type of environmentally destructive activity sought by ASC here, was that this parcel presumably consists of “roadless acres with degraded roadless area characteristics due to the proximity to a major recreational development,” i.e., an operational ski development. Id. at 39578 (emphasis added).*

Response

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>19</sup>

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

46. *While the CRR engaged in a landscape-level analysis and resulted in the preliminary, albeit baseless, generic assumption that all of the 8,260 acres affected (including the 80-acre parcel on Burnt Mountain) were degraded due to their proximity to an operational ski area, see id., the Service is now obligated in this site-specific implementation decision making process to analyze whether this 80-acre parcel is, in fact, degraded to the extent that the parcel no longer satisfies the Service's roadless criteria provided at 36 C.F.R. § 294.41, due to its purported proximity to the Snowmass Ski Area. See, e.g., Blue Mountains Biodiversity Proj. v. Blackwood, 161 F.3d 1208, 1214 (9th Cir. 1998) ("Nothing in the tiering regulations suggests that the existence of a programmatic EIS for a forest plan obviates the need for any future project specific EIS, without regard to the nature or magnitude of a project."); Te-Moak Tribe of Western Shoshone of Nevada v. U.S. Dept. of Interior, 608 F.3d 592, 605 n.13 (9th Cir. 2010) (explaining that while an agency may tier to a programmatic document, its subsequent site-specific NEPA review must thoroughly analyze any site-specific impacts not examined in depth in the programmatic document).*

Response

As stated on page 3-15 of the EA,

"The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado."<sup>20</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

47. *Tracking the agency's roadless criteria, the Service's site-specific analysis must consider the current condition of the natural resources of this 80-acre tract (e.g., "[d]iversity of plant and animal communities;" "[h]abitat for threatened, endangered, proposed, candidate, and sensitive species, and for those species dependent on large, undisturbed areas of land;" "[r]eference*

<sup>20</sup> Ibid.

*landscapes;” and “[n]atural-appearing landscapes with high scenic quality”), see 36 C.F.R. § 294.41, and determine whether the proximity of this particular recreational development (Snowmass Ski Area) degrades those resources and qualities to a level where the 80- acre parcel no longer satisfies the roadless criteria and therefore falls outside of the protections afforded inventoried roadless areas, thus allowing egress trail construction to proceed.*

Response

Page 3-20 of the EA provides a disclosure of impacts to the 80-acre parcel as if it were in a CRR and determines that the impacts would not be significant.

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>21</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

48. *Based on many years of personal observations during hikes, solitude, and other nonmotorized recreational activities on Burnt Mountain, including in this 80-acre parcel, Mr. Duerr and other signatories to this comment letter are aware of no evidence that this parcel is so degraded by the Snowmass Ski Area that it no longer provides “high scenic quality,” solitude, a “[n]atural-appearing landscape,” and “[h]abitat for threatened . . . and sensitive species,” which people, including some of the signatories to this letter, regularly observe in the area. Indeed, because there is a stark geographical boundary that separates Burnt Mountain from the Snowmass Ski Area, visitors to Burnt Mountain cannot see the Snowmass Ski Area at all or any of the ski area’s mechanical devices or other structures (e.g., ski lifts, buildings), nor do visitors to Burnt Mountain hear any sounds from the Snowmass Ski Area due to this geological boundary that blocks any line of sight or sound. See, e.g., Attachment D to Exhibit 1 (map showing demarcation between Burnt Mountain and Snowmass Ski Area); 2013 Draft EA at 3-29 (“[T]here is little evidence of ski area operations and maintenance in the area.”); 1994 ROD (discussing “the physical barrier . . .*

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<sup>21</sup> Ibid.

*imposed by the Elk Camp/Burnt Mountain Ridge”). Thus, when the CRR is considered in the context of this parcel as part of this site-specific decisionmaking process mandated by NEPA, the purported rationale for removing previously inventoried roadless areas from roadless protection simply does not apply, i.e., the parcel is not sufficiently degraded that it should be removed from the roadless inventory or an egress trail authorized for construction in the parcel. In the Draft EA, the Service has failed to seriously consider the impacts of constructing the egress trail on these nine regulation-based roadless criteria in the 80-acre parcel, in violation of NEPA. At minimum, however, if the Service’s analysis ultimately concludes that this 80-acre tract is in fact degraded to the point where it no longer satisfies the agency’s roadless criteria, the Service must provide its rationale explaining how this 80-acre portion of the IBMRA is degraded to a level necessitating its removal from the roadless inventory, but the remainder of the IBMRA (a 1632-acre portion still in the roadless inventory that is outside of ASC’s permit boundary) is not so degraded that it may remain in the roadless inventory as part of the IBMRA. In our view, these two similarly situated parcels – indeed portions of the still-existing IBMRA are closer to the Snowmass Ski Area than is the 80-acre parcel – cannot rationally be treated differently in terms of their classification or legal protections considering that they appear to have the same on-the-ground natural conditions. In any event, at minimum, the Service must explain the basis for making a distinction between the 80-acre parcel and the IBMRA (which, again, is more proximate to the Snowmass Ski Area yet remains under roadless protection) in the event that the Service authorizes the proposed action with respect to the egress trail in the 80-acre parcel.*

Response

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>22</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

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<sup>22</sup> Ibid.

49. *Concerning cumulative impacts to roadless characteristics, the DEA simply asserts: From a cumulative perspective, since implementation of projects contained in the action alternatives are not within the Burnt Mountain CRA, by definition, no cumulative impacts to roadless areas are identified specifically related to the action alternatives. DEA at 3-25. There are several problems with this. The most obvious is that cumulative impacts to “inventoried roadless areas” is not the same as cumulative impacts to lands with roadless qualities. The NEPA document is supposed to be assessing and disclosing impacts to roadless qualities, not just impacts to only those lands which the USFS has decided to include in the CRR roadless inventory. Another problem is that both action alternatives would contribute to a significant cumulative loss of roadless qualities on Burnt Mountain. Beyond the fact that there will be a direct and significant loss of roadless qualities in the 80-acre parcel (discussed below), the DEA also fails to disclose what other roadless impacts could follow from development of the 80-acre parcel.*

Response

The EA discusses the Roadless area characteristics of the 80-acre area (pp. 3-18 through 3-20) finding that the action alternatives would not affect the BMCRA. Additionally, as stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve Roadless area characteristics, as well as acres with degraded Roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating Roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>23</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

50. *Of particular concern, the DEA fails to disclose that when the USFS conducts roadless inventories, it has been applying large “buffer” zones between roads, clearcuts and other developments to disqualify otherwise roadless lands from the inventory. We believe this is inappropriate and contrary to the Wilderness Act, the Roadless Area Conservation Rule and other roadless policy. But regardless of the propriety of this conduct, it is wrong for the DEA to tell readers that clearcutting and grading a 20-40 foot wide ski trail that will be used by grooming machines will have no affect on the adjacent Burnt Mountain CRA. If either Alternative 2 or 3 were to be implemented, then the*

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<sup>23</sup> USDA Forest Service, 2012a Decision Rationale

*next time the USFS conducts a roadless inventory on the WRNF, a sizable portion of the remaining Burnt Mountain CRA will surely be disqualified from the CRA by the agency. Either action alternative would therefore have a significant impact not only on the roadless and wilderness qualities of the 80- acre parcel, but also on the roadless and wilderness qualities of the adjacent CRA. What is the buffer size the USFS uses for roadless inventories? Since the proposed egress trail is close to the CRA boundary, how many acres of the CRA could be impacted (e.g., disqualified from roadless status) if the USFS imposes such a buffer? The DEA is silent on these questions.*

Response

The EA finds that the action alternatives would not affect the Roadless character of the adjacent BMCRA. While the project is outside of the BMCRA, the WRNF’s 1997 Roadless area inventory concluded that the Burnt Mountain IRA was identified as “*not capable and not available for wilderness recommendation*” (p. 3-24). Additionally, as stated on page 3-15 of the EA,

*“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. The result is that existing ski area special use permit areas are not overlapped by CRAs. The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve Roadless area characteristics, as well as acres with degraded Roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating Roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>24</sup>*

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

51. *Why is the agency unable to embrace the truth and explain this to the public? Please be honest and tell the public that the 80-acre parcel currently has roadless qualities and currently has wilderness qualities but that its roadless and wilderness qualities could be eliminated or badly degraded if either action alternative were implemented. If the USFS returns the 80-acre parcel to the CRR roadless inventory, by correcting the applicable CRA map, this would still allow ASC to construct a wider egress trail on this parcel. However, this would have to be done with a full and honest disclosure to the public that the roadless and wilderness qualities would be irreversibly impacted.*

Response

As stated on page 3-15 of the EA,

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<sup>24</sup> Ibid.

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve Roadless area characteristics, as well as acres with degraded Roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating Roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>25</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

52. *The DEA offers a single conclusory sentence on the important issue of irreversible and irretrievable commitments associated with the proposal and other alternatives: No irreversible or irretrievable commitments of resources with respect to roadless areas have been identified in association with any of the alternatives .... DEA at 3-25. While the ID Team may not have “identified” any irreversible or irretrievable commitments, there are some big ones. As explained previously, both action alternatives would cause significant and permanent impacts to the roadless qualities of the 80-acre parcel, and would cause significant indirect and cumulative impacts (e.g., by proximity and buffers) to roadless qualities in the inventoried Burnt Mountain CRA and the 1,000+ acre parcel on the upper part of Burnt Mountain. The proposed egress trail would be effectively a permanent clearcut. This would represent an irreversible and irretrievable commitment of resources whereby the existing natural, undeveloped and roadless lands -- a resource of critical concern to the public and a resource that contributes to conserving biodiversity on the WRNF -- would be converted to a developed and disturbed landscape.*

#### Response

The EA discloses that the action alternatives would not affect the 9 Roadless area characteristics of the adjacent BMCRA. While the project is outside of the BMCRA, the EA discusses the Roadless area characteristics of the 80-acre area (pp. 3-18 through 3-20). WRNF’s 1997 Roadless area inventory concluded that the Burnt Mountain IRA was identified as “not capable and not available” for wilderness recommendation (p. 3-24).

53. *The DEA also fails to disclose that by degrading roadless and wilderness qualities, both action alternatives would also foreclose options for designating the 80-acre parcel and neighboring roadless lands as Wilderness. The DEA (page 3-13) states that, through the 1997 roadless*

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<sup>25</sup> Ibid.

*inventory process, the USFS classified the Burnt Mountain IRA as “not capable and not available” for Wilderness recommendation. However, that process was flawed because the USFS omitted over 1,000 acres of roadless lands from the Burnt Mountain IRA. This is documented in our July 16, 2012 petition. If these lands had been properly considered in the Wilderness evaluation, the agency may have found that the entire north side of Burnt Mountain (east of the Long Shot ski run) is capable of Wilderness designation because it comprises a larger and integral block of wilderness-quality land that extends for several miles along the existing Wilderness boundary.*

Response

WRNF’s 1997 Roadless area inventory concluded that the Burnt Mountain IRA was identified as “not capable and not available” for wilderness recommendation. Subsequent analysis determined that the Burnt Mountain CRA, which does not overlap the SUP, is composed of entirely non-upper tier acres. (p. 3-24) Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

54. *The NEPA document on this proposal must honestly recognize that lands with wilderness qualities could be added to the roadless inventory and may be recommended for Wilderness designation in the future. The NEPA document must also honestly inform the public that either of the action alternatives could permanently foreclose Wilderness designation options for the 80-acre parcel and other lands on Burnt Mountain. This would represent a significant impact and a significant irreversible and irretrievable commitment of resources.*

Response

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve Roadless area characteristics, as well as acres with degraded Roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating Roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>26</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

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<sup>26</sup> Ibid.

55. *Because both action alternatives would cause significant impacts to roadless qualities and wilderness qualities, and would also involve significant irreversible and irretrievable commitments, an EA and FONSI are inappropriate for this proposed federal action. Courts have held that an EIS is needed where roadless lands and wilderness qualities are impacted, even on lands which are not included in an official roadless area inventory. We are asking the USFS to do the right thing and prepare an EIS for this proposal ... or to abandon the proposal altogether because there appears to be no genuine need for such a wide and groomed egress trail on Burnt Mountain.*

Response

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve Roadless area characteristics, as well as acres with degraded Roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating Roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>27</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

56. *However, TAI appealed that decision, and after the Service’s field office initially authorized the construction of the egress trail, the Service’s Appeal Deciding Officer granted TAI’s requested relief and held that “actions associated with the Burnt Mountain Ski Traverse and Ski Trail Development may not be implemented” inside the IBMRA. See May 22, 2006 Appeal Decision (emphasis added). The primary reason for prohibiting the construction of the Burnt Mountain egress trail was that the Service had failed in its 2006 NEPA document (“2006 EA”) to analyze the irreparable impacts to approximately 80 inventoried roadless acres in the IBMRA (and the impacts to the natural resources of that inventoried roadless area) that would inevitably occur if the Service granted ASC authorization to construct the egress trail on those roadless lands, and thus permanently alter their roadless protections, and, in turn, their eligibility to become designated wilderness in the future pursuant to the Wilderness Act. See id.*

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<sup>27</sup> Ibid.

Response

The EA presents the affected environmental consequences with respect to this Roadless area characteristics. Note: the Project Area is not located within a designated CRA.

57. *The 2013 Draft EA eliminated from consideration any analysis of the proposed action’s impact on a future “wilderness” designation. See 2013 Draft EA at 1-10. However, this is a critical issue which the agency must provide a “hard look” as it considers whether to authorize development of this 80-acre parcel with an egress trail that will almost certainly have significant long-term environmental impacts. The 80-acre parcel where the egress trail is proposed was, since 1997, part of the 1732- acre IBMRA until the 80-acre parcel was, in our view, erroneously removed from the roadless inventory by the CRR as described above. Although the Service did not recommend the IBMRA in 2002 for wilderness designation, the Service nevertheless recognized the roadless qualities of the IBMRA – including the 80-acre parcel – and thus continued to protect this area by classifying it as roadless in the agency’s roadless inventory. This is particularly significant because the IBMRA is adjacent to the 181,000 Maroon Bells-Snowmass Wilderness Area. Thus, while the IBMRA in a vacuum might or might not satisfy the Wilderness Act’s designation criteria (e.g., “has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition,” 16 U.S.C. § 1131(c)(3)), when considered in conjunction with the adjacent wilderness area the IBMRA is a prime candidate for wilderness designation. See, e.g., *Lands Council v. Martin*, 529 F.3d 1219, 1230-32 (9th Cir. 2008) (requiring NEPA analysis of the loss of wilderness qualities in an uninventoried Roadless area of less than 5,000 acres because it bordered an inventoried roadless area); *Smith v. U.S. Forest Serv.*, 33 F.3d 1072, 1077-79 (9th Cir. 1994) (requiring NEPA review of action that would affect a 2,000-acre parcel of uninventoried Roadless land in conjunction with 4,000 acres of adjacent inventoried roadless land due to their combined potential for future wilderness designation). Accordingly, because it is certainly possible, if not highly likely, that the Service will one day consider the IBMRA for wilderness designation in conjunction with the adjacent wilderness area, the Service was (and is) required to consider and analyze the potential loss of the 80-acre parcel – which has long been part of the IBMRA and, in fact, still consists of undeveloped roadless characteristics – from future wilderness designation. The failure to examine this key issue – and indeed eliminate it from analysis altogether – violates NEPA.*

Response

WRNF’s 1997 Roadless area inventory concluded that the Burnt Mountain IRA was identified as “not capable and not available’ for wilderness recommendation.” Subsequent analysis determined that the Burnt Mountain CRA, which does not overlap the SUP, is composed of entirely non-upper tier acres. (p. 3-24) Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule and whether the Burnt Mountain CRA receives future wilderness designation with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

## C. PURPOSE AND NEED

58. *The Draft EA offers the following statements concerning the Purpose and Need (P&N) for the proposal to carve a strip clearcut across Burnt Mountain on lands that were previously acknowledged by the USFS to be roadless and are still roadless: [1] There is a need for an improved egress trail that provides the necessary width and snow surface to move skiers safely from the Burnt Mountain Glades, back into the developed trail network, on Long Shot trail. [2] There is a need for an egress trail that clearly signals the primary and preferred route back to the resort. Prior to 2012, skiers got lost or stuck in the flats below the Burnt Mountain Glades or traveled all the way down Burnt Mountain onto the Government Trail or across private lands. [3] Finally, there is a need for improved emergency access/egress that would provide the necessary width and grade to efficiently reach and evacuate persons needing patrol assistance. More efficient patrolling is necessary in this area to improve skier safety. DEA at 1-6 (enumeration added). As a threshold matter, if there really were a genuine need to make an egress trail with the “necessary” width and surface to move skiers safely -- and if there really were a genuine need to provide the “necessary” width and grade to reach and evacuate persons needing patrol assistance -- then the USFS and ASC have been negligent in creating gladed ski terrain on upper Burnt Mountain last year and inviting more skiers to use that terrain without the “necessary” egress trail. If there is a genuine safety problem with the width of the existing unimproved egress trail, then it doesn’t matter if this part of Burnt Mountain has been primarily used by advanced skiers because even the best skiers can get injured and require extrication. Ignoring the obvious contradiction between the P&N assertions of a necessity for a wider egress trail and the USFS’s decision to allow SkiCo to increase the number of skiers who would be using the existing egress trail, there is nothing in the DEA to show there is any genuine need for the kind of wide, groomed egress trail contemplated in either action alternative. If the USFS believes there is a true need for a wide trail, the NEPA document must present the data to verify this. What is the minimum “necessary width and surface” for skiers of different skill levels (e.g., expert, intermediate, beginner)? What skill level is required to safely ski the upper gladed terrain on Burnt Mountain? What studies did the agency rely upon to determine the minimum “necessary” width for a ski trail on a slope of this grade and for skiers having different experience levels? The agency cannot simply assert there is a need for a clearcut or highly thinned ski trail when the existing narrow trail has been used by intermediate and advanced skiers and ski patrollers for many years. ASC may desire authorization to construct a wide ski trail to maximize profits, but such a preference is not a genuine need. If there is a genuine problem with the existing trail, the NEPA document must present the evidence to verify that this problem exists. The document must also evaluate the scope of the problem (an insignificant problem may not warrant any action) and then evaluate alternatives that are specifically tailored to resolve the problem without going farther to resolve problems which don’t exist. The DEA does not do any of these things; it simply asserts there is a necessity for a wider trail, and then considers two high-impact, wide-trail alternatives that ASC prefers.*

Response

The Purpose and Need is presented on pages 1-5 and 1-6 of the EA. The Purpose and Need statements identify the existing condition and the purpose for the project. Pages 3-26 through 3-28 of the EA present the Affected Environment for the recreation resource and the egress trail. The Forest Service and ASC worked collaboratively to determine the width of the egress trail that includes accounting for topography and skier experience and operational constraints.

59. *Concerning P&N claim [2] -- the allegation that skiers have gotten “lost or stuck in the flats” -- the DEA does not explain how many times this kind of incident has occurred or the circumstances involved in the incidents. Because the ski tracks from other backcountry skiers would have revealed where the true egress trail was located, it is likely any skiers who got lost or stuck in the flats chose to venture below the existing traverse trail intentionally, not accidentally. Widening the egress trail to bring more skiers and less experienced skiers onto Burnt Mountain would therefore only lead to more skiers going below the trail in the future because a certain percentage of skiers enjoy going off-trail and exploring unmarked terrain. Simply put, more skiers will mean more out-of-bounds skiing. Why does the USFS believe luring more people to Burnt Mountain would not increase the number of skiers venturing below the proposed improved traverse trail into the flats? The NEPA document must address this issue.*

Response

As the EA states on page 1-6, “There is a need for an improved egress trail that clearly signals the primary and preferred route back to the resort.” A cleared egress trail, in conjunction with a roped operational boundary, at ski areas across the U.S. is an effective means for demarcating an appropriate route for skiers to follow. The egress trail is also analyzed for the alternatives on pages 3-28 through 3-31 of the EA.

60. *If the USFS truly believes there was a serious problem with skiers going down into the flats because they were confused about where the existing egress trail is located, this could have been addressed years ago simply by putting more trail markers on trees to delineate the location of the existing unimproved egress route. Or it could have been addressed by posting signs that the terrain below the existing unimproved traverse is closed to skiing. Or it could have been addressed by putting up a rope or an orange flex-fence to keep skiers from going below the existing traverse trail, just as the USFS is now proposing to do under both Alternative 2 and Alternative 3. See DEA at 2-2 (“[t]he exterior (skier’s right) edge of the proposed egress trail would be roped as the new ski area operational boundary”) and DEA at 2-3 (“[t]he exterior edge of the Eastern Traverse and proposed egress trail would be roped as the new ski area operational boundary”). If skiers getting lost and stranded in the flats has been a genuine problem and safety concern over the years, then the USFS and ASC have also been negligent in this respect for failing to correct this with a simple and readily available solution that could have been implemented at any time without any NEPA study. In any case, the simple fact remains that claim [2] in the P&N does not warrant any tree*

*removal or ski trail widening. To the extent that this may be a genuine concern that warrants some action, it could be fully addressed by putting up ropes and signs without cutting down a single tree and without doing any earth moving or grooming.*

Response

The existing developed operational boundary (post 2012 Burnt Mountain Glades development) is roped. As the EA states on page 1-6, “There is a need for an improved egress trail that clearly signals the primary and preferred route back to the resort.” A cleared egress trail, in conjunction with a roped operational boundary, at ski areas across the U.S. is an effective means for demarcating an appropriate route for skiers to follow. The egress trail is also analyzed for the alternatives on pages 3-28 through 3-31 of the EA. In addition, the commenter is questioning one component of the Purpose and Need, when there are multiple needs the action alternatives are proposed to fulfill.

61. *Concerning claim [1] -- the allegation that there is a “need for an improved egress trail that provides the necessary width and snow surface to move skiers” back to the Long Shot ski trail -- the existing primitive traverse trail has been used for years by skiers and ski patrol personnel to get back to Long Shot. What hard evidence does the USFS have that this existing trail is inadequate? Even if the existing trail may not be suitable for beginning skiers, this alone is not justification to clearcut and bulldoze a wide, groomable ski trail across the face Burnt Mountain ... because a ski area does not need to have every skiable acre “improved” to be suitable for beginner or intermediate skiers or snowboarders. Here again, to increase profits. ASC may prefer to make Burnt Mountain suitable for inexperienced skiers and snowboarders, but a private corporation’s profit motive is not a valid purpose and need for clearcutting a large swath of public forest.*

Response

The ski area and WRNF monitor the operational issues of the ski area and understands the problems with maintaining adequate snow surface and congestion posed by the current egress trail. Burnt Mountain Glades and the proposed egress trail are not intended to accommodate the beginner skier ability level.

62. *The DEA does not even disclose which type of skier (e.g., intermediate, advanced, backcountry) the skiable terrain on the upper part of Burnt Mountain is intended to accommodate. Most of this terrain will not be groomed and involves tree skiing, so it is clearly not going to be suitable for beginner skiers. So why is the USFS proposing to authorize what amounts to a green-level egress trail when the skiers using that trail will not be beginners? Without knowing the target group, readers cannot tell if either of the “action” alternatives presented in the DEA would represent the minimum development and impact that could accommodate the target group ... or if these two alternatives represent far more development than is needed to accommodate the target group. Experienced and intermediate skiers do not require a 30-40 foot wide graded and groomed ski trail like the one contemplated in Alternative 2. Even beginner skiers could get by with a narrower trail (many green runs at the ASC ski areas are less than 30-feet wide). Nor do skiers of any level*

*require the kinds of developments contemplated in Alternative 3, such as a 250-foot wide swath of forest thinned by 40% basal area, along with a 20-foot wide clearcut and groomed lower segment.*

Response

As stated in the Purpose and Need, page 1-6, “There is a need for improved emergency access/egress that would provide the necessary width and grade to efficiently reach and evacuate persons need patrol assistance. More efficient patrolling is necessary in this area to improve skier safety.” The EA clearly states that the Burnt Mountain Glades and Egress Trail provide hike-to gladed skiing, which is not intended for beginners.

63. *Similar remarks apply to the P&N claim ([3]) that there is a need for improved emergency access/egress for ski patrol personnel. Ski patrollers are among the most experienced skiers on the slopes. This is precisely why they are selected to be patrollers. As with other experienced skiers, ski patrollers do not require a 30-40 foot wide clearcut ski trail for access or egress (Alternative 2). Nor do they require a 20-foot wide clearcut lower trail or a 250-foot wide thinned upper trail (Alternative 3). Nor do they require spot grading (earth moving) or grooming (Alternatives 2 and 3). It is dishonest for the USFS to use safety as an excuse to clearcut and level a wide ski trail suitable for grooming equipment when such a trail is not needed for ski patrollers. What hard evidence does the USFS have that the existing trail is inadequate for ski patroller access/egress? What actual evidence is there that “More efficient patrolling is necessary in this area to improve skier safety”? What is the minimum width trail a ski patroller requires to operate a snowmobile towing a patient sled? What study is this estimate based on? If any such information exists, it should be presented in the NEPA document. If this information does not exist, then the agency cannot use “improved ski patrol access” as part of the P&N because there is nothing in the record to show the existing trail is inadequate for ski patrol access or that a 20-40 foot wide trail is required for ski patrol operations. If the minimum trail width required for ski patrol snowmobiles and sleds is 7 feet, then the NEPA document should disclose this and rigorously explore alternative traverse trail designs that are only 7 feet wide.*

Response

The main focus of improved emergency access/egress is in support of medical emergencies. Certain evacuations by ski patrol require parallel sleds (one with the patient, the second with ski patrol providing life support). This must be planned for and considered. In addition, the egress trail would continue to have cross-slope in areas that require a greater width to navigate. A specific, confining, minimum trail width is unrealistic as snow conditions, topography and skier circulation is a changing factor that must be considered in the design of the egress trail.

64. *The DEA (page 2-1) goes on to assert that “emergency access and injured skier extrication by Snowmass Ski Patrol via the egress route is compromised due to the dense trees and undependable snow conditions.” The DEA also asserts (page 3-27 and 3-28 that the existing egress route “often*

*times” has “unfavorable snow conditions” and that there can be “bumps and rills” and “thin areas.” What monitoring data did the USFS rely upon to determine the existing route is “compromised” by “dense trees and undependable snow conditions”? What is meant by “undependable snow conditions” and “unfavorable snow conditions”? How often are snow conditions “undependable” or “unfavorable” or “thin”? Snow conditions are constantly changing. Even improved ski trails become icy and moguled at times. Nevertheless, ASC does not groom every ski run or close them with this happens. In fact, many runs are left in a highly moguled (i.e., compromised) condition because some skiers enjoy the challenge of skiing such terrain. The USFS and ASC never assert those trails are compromised or unsafe for ski patrollers. Why is Burnt Mountain different? The NEPA document must address these relevant questions as well. Ski patrollers routinely operate off trail and on snow with poor conditions. As noted previously, they are highly experienced and do not need a groomed trail. If there were an actual need to provide better snow conditions on Burnt Mountain at times, there are ways to provide an improved ski trail without clearcutting the forest, such as is done using snowmobiles to maintain smooth cross-country ski trails. If it were true that “undependable” snow conditions was a real safety problem, this kind of grooming could have been done on Burnt Mountain at any time by ASC, without a NEPA study. Did ASC ever ask the USFS for permission to do snowmobile grooming along the existing egress trail? If not, then ASC clearly was not concerned about the snow conditions. In any case, the proposed trail is a traverse collector or egress trail, not a downhill ski trail. This trail would basically be a cross-country trail that allows skiers to traverse laterally across the mountain and back to the main ski runs. This trail, like the existing backcountry traverse trail, is not intended for freestyle skiing. A narrow ski trail is sufficient for the purpose of serving as a collector to move skiers back to Long Shot. There is no defensible basis for saying a 20- to 40-foot wide clearcut, bulldozed and groomed trail is required by ski patrollers or any other skiers.*

Response

The Forest Service has skied this area and understands the constraints. The ski area is basing statements in the EA on professional experience at Snowmass and other ski areas across the WRNF that include similar egress trails.

65. *In the context of the Purpose and Need, the DEA also fails to mention that some tree removal was already completed on the egress trail last summer, on the upper and lower segments outside the Burnt Mountain IRA. The central portion of the traverse trail that would go through the 80-acre parcel which the agency improperly removed from the inventoried Burnt Mountain Roadless Area may not need any thinning or additional improvement now that the upper and lower segments of this trail have been thinned. The DEA does not evaluate this issue. Without this disclosure, there is no way for readers to know if the real reason for pursuing an even wider and more “improved” egress trail is that ASC wants to advertise more improved ski terrain suitable for beginner and intermediate skiers so it can lure more customers to Snowmass and make greater profits. The*

*NEPA document must disclose the extent to which the glading / thinning that was already completed by ASC may have addressed any purported “safety” issue and “need” for improved access to and egress from Burnt Mountain.*

Response

The tree removal conducted in 2012 in conjunction with the Burnt Mountain Glades did in fact occur outside of the 80-acre parcel. The WRNF understood that additional review was required in response to the result of the 2006 EA process, as described in the Purpose and Need on page 1-6 of the EA. The second Purpose and Need statement identified in Chapter 1 of the EA discloses why the project is proposed.

66. *It is also important to note that the ASC anticipated opening the new gladed terrain on Burnt Mountain would bring an average of around 100 new skiers to the ski area each day. DEA at 3-5. However, it appears this number was not achieved. Id. What was the actual increase in use of Burnt Mountain after ASC put the newly gladed terrain within the ski area’s operational boundary? What are the visitor use trends at ski areas in the region? Are numbers of visiting skiers increasing, decreasing, or staying roughly flat? Ski area visitation tends to increase after new terrain is opened (“build it and they will come”) but then drops off a few years later when the “new terrain” is no longer new. What is the projected use of the Burnt Mountain terrain 5 years from now? Will it return to the skier numbers the Mountain experienced a few years ago without the recently gladed terrain? These are important questions for justifying any new ski trail development, yet the DEA does not even discuss them in the context of Purpose and Need. The DEA (page 2-8, Table 2-2) states that even if Alternative 2 or 3 were implemented there would continue to be a “low density” of skiers. Why does the USFS believe a 20-40 foot wide clearcut and groomed egress trail is “needed” to accommodate a low density of skiers? Demand is also a key issue for the P&N because ASC stated publicly that it would not seek to develop Burnt Mountain -- which includes construction of an “improved” egress trail -- unless demand warranted. See the March 7, 2006 article in the Aspen Daily News, entitled Decision Paves Way for Burnt Mountain Project, quoting ASC spokesman Jeff Hanle. If relatively few people will be using the new gladed terrain, then there is no basis for asserting a wide, bulldozed and groomed egress trail is needed to accommodate additional skiers.*

Response

The Purpose and Need is disclosed on page 1-6 of the EA. Chapter 3 of the EA discloses how the alternatives would achieve the Purpose and Need. The WRNF did not identify demand as a key issue to be analyzed in the EA. The project is not in response to skier demand, but rather to maintain a high quality skiing experience while addressing identified safety concerns.

67. *Thousands of acres of heavily developed ski terrain already exists at Snowmass. Preserve the 'character' of Burnt Mountain as it exists today for the both the habitat and the safe "Side country" experiences that it offers the winter guests that seek those quiet glades where the sno-cats can't go.*

Response

Chapter 3 of the EA describes the character of the Burnt Mountain area and qualitatively describes the impacts to the character of this area.

**D. ALTERNATIVES**

68. *ASC encourages the Forest Service to authorize the Egress Trail as identified in either Alternative 2 or Alternative 3 in the EA. ASC originally proposed the Egress Trail identified in Alternative 2. After reviewing public comments submitted in response to the scoping notice, and based upon other factors, the Forest Service identified an alternate Egress Trail in Alternative 3. ASC has carefully reviewed Alternatives 2 and 3. Either alternative would provide a safe, accessible, and manageable egress route out of the Burnt Mountain terrain. If the Forest Service determines that Alternative 3 is satisfactory, viable, and minimizes potential adverse effects, ASC believes that Alternative 3, like Alternative 2, would accomplish the purpose and need of the proposal identified in the EA.*

Response

Thank you for your comment.

69. *NEPA was intended to be an action-forcing statute whereby federal agencies would study proposed actions, identify less damaging alternatives, and then pursue actions that would "prevent or eliminate damage to the environment and biosphere." 42 USC § 4321 and 40 CFR §§ 1500.1(a) and 1502.1. The DEA is not being used to identify less damaging alternatives. It only evaluates two relatively similar action alternatives that would cause similar impacts to wildlife, roadless qualities, and wilderness qualities, and visual quality, and it dismisses less damaging alternatives from detailed consideration.*

Response

NEPA requires that an environmental analysis examine a range of alternatives, which are "reasonably related to the purpose of the project."<sup>28</sup> Furthermore, Forest Service Handbook 1909.15 states: "Reasonable alternatives to the proposed action should fulfill the purpose and need and address unresolved conflicts related to the proposed action. Be alert for alternatives suggested by participants in scoping and public involvement activities. Consider alternatives, even if outside the jurisdiction of the Agency."<sup>29</sup> The EA discloses alternatives considered but eliminated from detailed analysis and rationale for elimination.

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<sup>28</sup> 40 CFR 1502.14(a)

<sup>29</sup> FSH 1909.15, Chapter 10, Section 14

70. *Unfortunately, Alternatives 2 and 3 do not represent a full spectrum of reasonable alternatives that would address public issues and concerns or reduce environmental damage. In particular: \* There is no action alternative that would avoid the 80-acre parcel of land that has been previously acknowledged by the USFS to be roadless. \* There is no action alternative that does not involve clearcutting. \* There is no action alternative that would not involve spot grading. \* There is no action alternative based on minimal trail width for ski patrollers. Alts \* There is no action alternative that would limit the “improvement” to a narrow (e.g., 6-7 foot wide) ski trail subject to snowmobile grooming (e.g., cross-country ski trail) to address assertions that snow conditions on the existing egress trail are “undependable” and create a problem for skiers or snow patrollers. \* There is no action alternative that would address P&N claim 2 -- skiers getting stuck or lost in the “flats” -- by roping off the ski area boundary below the existing unimproved ski trail, without widening the existing trail.*

Response

NEPA requires that an environmental analysis examine a range of alternatives, which are “reasonably related to the purpose of the project.”<sup>30</sup> Furthermore, Forest Service Handbook 1909.15 states: “Reasonable alternatives to the proposed action should fulfill the purpose and need and address unresolved conflicts related to the proposed action. Be alert for alternatives suggested by participants in scoping and public involvement activities. Consider alternatives, even if outside the jurisdiction of the Agency.”<sup>31</sup> The EA discloses alternatives considered but eliminated from detailed analysis and rationale for elimination. This includes a consideration of alternatives that would avoid the 80-acre parcel.

The existing developed operational boundary (post 2012 Burnt Mountain Glades development) is roped. As the EA states on page 1-6, “There is a need for an improved egress trail that clearly signals the primary and preferred route back to the resort.” A cleared egress trail, in conjunction with a roped operational boundary, at ski areas across the U.S. is an effective means for demarcating an appropriate route for skiers to follow. The egress trail is also analyzed for the alternatives on pages 3-28 through 3-31 of the EA. In addition, the commenter is questioning one component of the Purpose and Need, when there are multiple needs the action alternatives are proposed to fulfill.

71. *Alternative 3 does not respond to either of these concerns. Even this trail design involves extensive tree removal, clearcutting and earth moving. These activities will cause significant impacts, and they will also change the undeveloped character of the area to a developed character. It is dishonest for the agency to present an alternative that does not address public concerns and then tell the public the alternative was specifically designed to address those concerns.*

<sup>30</sup> 40 CFR 1502.14(a)

<sup>31</sup> FSH 1909.15, Chapter 10, Section 14

Response

Alternative 3 was developed in response to comments provided by the public during scoping. Alternative 3 would reduce the amount of full clearing when compared to Alternative 2 (as described on p. 2-6).

72. *Why is it that thinning (Alternative 3) is acceptable on some parts of the proposed trail but not in others? Why does the agency believe some parts of the trail need to be groomed while other parts do not, as proposed in Alternative 3?*

Response

The amount and location of clearing, glading, grading and grooming is based on topography, both fall-line and side-slope. Some areas can be gladed because skiers would primarily be fall-line skiing. Some areas would need to be cleared and graded to account for existing side-slope.

73. *DEA at 2-5. Basically, what the agency is saying here is that because it already allowed ASC to glade (thin) the forest on Burnt Mountain it is no longer possible to consider alternative egress trail designs that would avoid the 80-acre parcel that was previously recognized as the agency as part of the inventoried BMRA. This discussion in the DEA reveals that the agency already violated NEPA in two ways. First, it shows the agency has piecemealed the NEPA analysis so that the impacts from the glading were separated from the impacts of the egress trail that would later be constructed to accommodate the gladed terrain. And second, it shows the agency, by its assessment, foreclosed reasonable alternatives by allowing the glading to be completed before the NEPA analysis was conducted on the proposed egress trail. See 40 CFR § 1506.1(a)(2).*

Response

All projects were previously analyzed and the gladed terrain was approved for construction. The egress trail, within the previous Burnt Mountain IRA, was remanded by the Appeal Deciding Officer. As stated on page 1-5 of the EA, one of the purpose and need's for the project is procedural in response to the Appeal Deciding Officer's decision on the 2006 DN/FONSI.

74. *As for the DEA's assertion that "no significant resource issues" associated with the Proposed Action were identified that would require that the analysis consider a shorter egress, this is ludicrous. The primary issue that gave rise to this DEA was our administrative appeal objection that the proposed egress trail would cut through a parcel of roadless land. That parcel is still just as roadless as before even if the USFS is refusing to include it in the CRA inventory. This key issue has not gone away. Inventoried or not, the USFS has an obligation under NEPA to evaluate at least one alternative that would avoid the 80-acre parcel to prevent converting it from a roadless and undeveloped forest to a clearcut and developed forest.*

Response

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>32</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

In addition to the action alternatives, Alternative 1 – No Action was also considered and analyzed in the EA. The WRNF does not consider the 80-acre parcel (no longer designated roadless per the CRR) to be a significant issue. Page 2-5 includes the consideration of a shorter egress trail.

75. *The DEA also euphemistically mentions “spot grading” repeatedly, but this is ambiguous and does not explain exactly what is contemplated. The DEA does not even say bulldozing. Why exactly is grading needed at all? What are the criteria the USFS used to determine the need for grading? What type of equipment would be used to do the earth moving? Where precisely would the grading be conducted? Would the grading be limited to 500 feet length or would it be collectively 500 feet of grading done over 1,000-2,000 feet of the egress trail? How much soil or earth would be moved? How deep would the spots be graded? Would it remove all soil horizons, several horizons, just the top layer, or only part of the top layer? How many “spots” would be graded or leveled? How wide would the grading occur? Would it make a width-wise level surface like a road bed? Without answers to these questions, readers cannot understand the nature of the proposed action or the resulting impacts. A detailed topographic map should be included to show the locations of the proposed earth moving. Also, what alternatives did the USFS consider to bulldozing? It is possible to fill instead of grade, and it is also now possible to build an artificial trail bed that does not involve any earth moving. Why was this option not explored?*

#### Response

The resource conditions for the area have been analyzed in the EA. The spot grading would occur in areas with side-slope to accommodate appropriate egress and access for guests and ski patrol. The EA discloses that the spot grading would not exceed approximately 500 feet in length along segments of the egress trail.

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<sup>32</sup> USDA Forest Service, 2012a Decision Rationale

76. *The DEA refers to the existing primitive trail (Eastern Traverse) as a “roadbed.” See, e.g., DEA at 1-5 (approximately 2,700 feet of trail was proposed to use an existing roadbed/trail corridor”) and 3-27. This is misleading. That trail did have a small amount of earth work performed decades ago, but it is not clear it was ever a “road” suitable for motorized vehicles. Based on field inspections, we believe it was merely a trail with some leveling. In any case, it no longer has any features of a road or roadbed. The trail is overgrown with trees and other vegetation and even the spots that experienced some earth moving are almost unnoticeable to an untrained eye. The NEPA document should provide one or two photos of the existing condition so readers can understand the nature of the affected environment.*

Response

The exact history and use of the disturbed platform is not known. Presumably it was used for historic (pre-ski area) logging operations in support of the mining industry. Refer to the Errata that identifies this correction in the document. The Errata does not correct statements made in the 2006 EA.

77. *The Service has illegally circumvented NEPA by improperly and myopically narrowing its alternatives analysis on completing this specific egress trail in this particular 80-acre parcel. However, because NEPA cannot be used to justify decisions already made by the agency or a private party acting under its authority, the Service is required to consider a broader range of reasonable alternatives including placing an egress trail in other locations on Burnt Mountain – outside of the 80-acre parcel – that would have less environmental impact. See 40 C.F.R. §1502.2(g) (requiring that the NEPA process “shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made”); id. § 1502.5 (requiring that NEPA review “shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made”) (emphasis added).*

Response

NEPA requires that an environmental analysis examine a range of alternatives, which are “reasonably related to the purpose of the project.”<sup>33</sup> Furthermore, Forest Service Handbook 1909.15 states: “Reasonable alternatives to the proposed action should fulfill the purpose and need and address unresolved conflicts related to the proposed action. Be alert for alternatives suggested by participants in scoping and public involvement activities. Consider alternatives, even if outside the jurisdiction of the Agency.”<sup>34</sup> The EA discloses alternatives considered but eliminated from detailed analysis and rationale for elimination. This includes a consideration of alternatives that would avoid the 80-acre parcel.

78. *There is nothing in the CRR prohibiting the Service from adding the 80-acre tract back into the roadless inventory. While the CRR erroneously, and without any site- specific analysis, purportedly*

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<sup>33</sup> 40 CFR 1502.14(a)

<sup>34</sup> FSH 1909.15, Chapter 10, Section 14

found this 80-acre parcel to be “degraded” due to its proximity to an operational ski area, the CRR and its accompanying EIS did not suggest that the CRR precludes inventoried roadless areas from overlapping with operational ski areas, and indeed they said otherwise. See Attachment F (CRR EIS explaining that under the preferred alternative – Alternative 2 – inventoried roadless areas can in fact fall within ski area expansion boundaries: “It would be permissible to cut trees incidental to implementing a permitted, ski-area management activity, not otherwise prohibited in a CRA [Colorado Roadless Area]. Such ski area expansions without road construction could take place in upper tier acres, as well as in regular CRA acres.”) (emphasis added). Therefore, nothing prevents the Service from considering an alternative that would return this 80-acre tract to the roadless inventory; thus, the failure to consider that option at all violates NEPA and its implementing regulations.

### Response

As stated on page 3-15 of the EA,

“The 2012 Colorado Roadless Rule does not include 8,300 acres of former IRAs associated with 13 existing ski area special use permits and ski area development allocations within forest plans as CRAs. *The result is that existing ski area special use permit areas are not overlapped by CRAs.* The State requested that the Forest Service take this action to better balance the social and economic importance of ski areas with the need to conserve roadless area characteristics, as well as acres with degraded roadless area characteristics due to the proximity to a major recreational development. This represents <0.2 percent of CRAs across the state. Eliminating roadless area designations within ski area permit boundaries was designed to ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the specific concerns identified by the State of Colorado.”<sup>35</sup>

Therefore, all other comments, questions and concerns regarding the 2012 Colorado Roadless Rule with respect to this analysis are beyond the scope of this analysis and the decision space for this EA.

79. *Potential Alternative: “Minimal Egress Trail” – Authorize very selective logging of a minimal number of trees along the egress trail so that the roadless/wilderness qualities are preserved and impacts to wildlife habitat are minimized, but skier egress is still possible (i.e., a highly modified version of Alternative 3 that would minimize environmental effects); • Potential Alternative: “Short Egress Trail” – Keep the eastern part of Burnt Mountain open only to backcountry skiing, and create an improved egress trail from the Burnt Mountain Glades that are closest to Long Shot; • Potential Alternative: “Non-IRA Egress Trail” – Design an egress trail that completely avoids the 80-acre IRA parcel, as described above.*

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<sup>35</sup> USDA Forest Service, 2012a Decision Rationale

Response

These alternatives are considered on pages 2-4 and 2-5.

**E. RECREATION**

80. *ASC respectfully requests that the Forest Service authorize the Egress Trail after it completes the EA. The relatively minor amount of on-the-ground work required for the Egress Trail will improve both skier safety and the recreational experience of skiers and snowboarders at Snowmass Ski Area. With the Forest Service's authorization, in Fall 2012 ASC gladed terrain on the eastern side of Burnt Mountain and added the terrain to the managed terrain network of Snowmass Ski Area. The Egress Trail is necessary to provide a defined, effective and safe egress route from the bottom of the Burnt Mountain terrain out to the managed terrain network served by the Two Creeks Lift.*

Response

This comment reflects the Purpose and Need identified in Chapter 1 of the EA.

81. *The DEA presents maps that indicate the approximate location of the glading that was done in the summer and fall of 2012. However, the maps do not provide enough detail to show where the actual glading occurred. In addition, there is no way to compare the locations where the glading was done with the locations that were authorized for glading under the 2006 EA and DN/FONSI. Based on a preliminary assessment, using the project map provided in the 2006 EA, it appears ASC may have gladed numerous areas on Burnt Mountain that were not authorized for glading under the 2006 Decision. The revised NEPA document should present acreage estimates and a map to show where the glading was done so readers can compare this with the locations and acreages that were authorized under the 2006 DN/FONSI. This information is also needed so readers can understand the nature of the Affected Environment and the alternatives. In particular, this information is needed so readers can verify the DEA's claim that glading was done down to where the proposed egress trail would begin on the eastern portion of Burnt Mountain.*

Response

Glading was completed within the area depicted on Figure 2. That glading and the verification of locations consistent with the 2006 EA are not within the scope of this analysis. Page 3-26 of the EA states that the Burnt Mountain Glades is approximately 250 acres in size, but this does not imply 250 acres were gladed. Rather, the 250-acre area is what is now skied by guests of Snowmass.

82. *According to the Service, analysis in the 2013 Draft EA is limited to winter ski season; "no summer use (beyond construction/maintenance) is being analyzed in this [2013] NEPA analysis." 2013 Draft EA at 1-6; see also id. at 3-26 ("No summer recreational use in the Burnt Mountain area is analyzed in this NEPA analysis.>"). Confining the analysis to include only winter activities, however, is flawed: there is a strong likelihood that the proposed egress trail will not only encourage increased usage of the Burnt Mountain gladed area during the winter operating season,*

*but will also lead to additional visitor use during other seasons as well (as has happened in the past even when the Service has issued closure orders). Further, the 2003 MP, which is referenced abundantly throughout the 2013 Draft EA, indicates that along with ski area expansion, ASC intends to implement expanded summer activities “in creative ways, and onto other areas of the mountain as trends, needs and opportunities change to enhance the existing summer mountain experience,” 2003 MP at 50, and, specifically provides that “[t]he hiking, biking and equestrian system will be expanded to other areas on Snowmass Mountain offering additional summer opportunities.” Id. at 51.*

Response

The WRNF does not anticipate the proposed egress trail to encourage summer use. However, should people choose to hike up or down the proposed egress trail, the use effects to resources would be negligible and discountable. Regarding the 2003 MP, the proposed project, as described and analyzed in this EA, does not have value to promote summer recreation. This project is a winter ski area egress trail.

83. *Compare “no tree removal within the area identified as gladed skiing is proposed,” id. at 3-29 (emphasis added), with “[i]n the future, as identified in the 2003 Master Plan, the terrain on the eastern flank of Burnt Mountain could be cleared minimally as necessary to provide gladed skiing from top to bottom,” id. at 3-32 (emphasis added)*

Response

The quotation provided, “no tree removal within the area identified as gladed skiing is proposed,” is provided from the Alternative 2 – Direct and Indirect Effects Environmental Consequences. The latter quotation is provided from the Cumulative Effects analysis. The Cumulative Effects analysis also states, “Additional clearing included in the 2003 Master Plan would be subject to Forest Service authorization if not previously authorized via the NEPA process” (p. 3-32).

84. *Compare “[f]irst proposed in the 1994 Snowmass Ski Area EIS, the Burnt Mountain egress trail was not implemented,” 2013 Draft EA at 3-26, with “no [Burnt Mountain] traverse was ever site-specifically identified or analyzed in detail in the [1994] FEIS,” 2006 EA at 9 (emphasis added), and “[w]ith the exception of the Burnt Mountain skier egress trail, all of the ski terrain proposed in this [2006] EA was previously approved in the 1994 ROD,” id. at 111 (emphasis added)*

Response

Commenter is correct that the proposed Egress Trail was discussed in the 1994 EIS, but not site specifically analyzed or implemented. The skier egress trail referred to in the 2006 EA is the “traverse measuring 3,200 feet in length 30 to 40 feet wide” (p. 3-26). The upper and lower portions of this traverse (or egress trail) were completed in the summer of 2012 and this EA proposes to complete the traverse in the 80-acre portion of Burnt Mountain removed from the BMCRA.

85. *Compare “[t]he Proposed Action is not anticipated to measurably increase visitation,” 2013 Draft EA at 3-28, with “ASC believes the potential increase in skier visits to Snowmass with the incorporation of in [sic] the Burnt Mountain Glades to be up to 100 skiers per day,” 2013 Draft EA at 3-27.*

Response

The Proposed Action and the previously implemented Burnt Mountain Glades are not connected actions as defined by NEPA. As stated on page 3-28 of the EA, “the Proposed Action is not anticipated to measurably increase visitation.”

86. *The 2013 Draft EA analyzes in a superficial manner the effect the proposed action may have on the experience of alpine skiers, and concludes that the upshot of the egress project would be to “enhance the overall recreation experience at Snowmass,” 2013 Draft EA at 3-32. However, within its “Recreation” analysis, the Service fails to give adequate consideration to the negative effects encouraging additional skier traffic in the Burnt Mountain Glades could likely entail. For example, according to the 2013 Draft EA, “[s]tarting in the 2012/13 ski season, the operational boundary rope marked the outermost edge of the Burnt Mountain Glades, which effectively remedied the situation in which skiers would get lost outside of the ski area boundary,” id. at 3-27 (emphasis added). The maps are unclear as to where this boundary, exactly, is marked, but from the description, it appears as if skiers are given full use of the Burnt Mountain Glades area, including those eastern areas previously found by in the 1994 ROD to be “highly unstable” with “copious evidence of active landslides, debris avalanches and other forms of coarse sediment[] erosion.” 1994 ROD. Thus, it would seem the additional safety gained – if any – through implementation of an egress would be outweighed by the additional risk incurred with more and more skiers using this unpredictable and varying terrain, especially since the glades will, apparently, not be marketed to expert skiers only, but to intermediate and beginner skiers as well, most of whom will have little to no experience with backcountry conditions.*

Response

The Burnt Mountain Glades that were developed in 2012 and the proposed egress trail would be controlled and maintained by Snowmass ski patrol. The EA discloses the anticipation of low skier densities in the Burnt Mountain Glades.

87. *Moreover, a key issue that must be given a hard look – but has not in the Draft EA – is the loss of backcountry skiing opportunities for the more experienced skiers. As a result of the proposed project, Burnt Mountain would essentially become yet another developed ski area full of inexperienced skiers – like all of the other ski resorts operated by ASC in the nearby area – depriving backcountry skiers of their longstanding ability to use this rare backcountry skiing location for recreation, solitude, and enjoyment. The Service must analyze the significant loss of this visitor recreation opportunity, as the failure to do so would violate NEPA.*

Response

As of the 2012 ski season, the Burnt Mountain Glades were within the area controlled and maintained by ski patrol; therefore, backcountry terrain would not be lost with the proposed project.

88. *Surprisingly, the 2013 Draft EA fails to address recreation impacts beyond those specific to alpine skiers, despite the plethora of other outdoor winter (and summer) activities likely to be affected by the proposed action. The Service says nothing about the impact that increased alpine skier usage of the Burnt Mountain Glades might have on the recreational experience of people who use the surrounding area for snowshoeing, hiking, wildlife viewing, hunting, and other activities, despite the fact that – as explained above – the maintenance of the proposed egress and the additional ski activity itself is likely to adversely affect vegetation and wildlife populations within the (currently undeveloped) 80-acre parcel. See generally Exhibit 2; Exhibit 4.*

Response

As of the 2012 ski season, the Burnt Mountain Glades were within the area controlled and maintained by ski patrol. The proposed project is not anticipated to affect dispersed winter or summer recreation, including the activities referenced by the commenter.

89. *Alternative 3 is safer- as it reduces substantially the congestion of skiers/boarders having to make constricted turns in close trees, on a steep pitch at the beginning of the Alt 2 trail, which will result in large “luge trough” moguls formed around the few remaining trees as proposed in Alternative 2. These luge troughs are unsafe and force most skiers/boarders to side-slip thereby destroying the snow surface, exposing rocks, and increasing the potential for injuries. Alt 3 provides better and safer skiing by allowing the majority of skiers using BM Glades to continue skiing down the fall line all the way to the bottom of the pitch to the egress trail.*

Response

The snow surface for alternatives 2 and 3 would be maintained by ASC operations to provide a quality experience for guests of the area and a safer egress and access for guests and emergency response.

90. *Alternative 2 encourages skiers and especially snowboarders to start traversing westward, high above the egress trail to avoid walking to make it to the egress trail. This creates an unsafe situation where, for example, some boarders are traversing westward through the trees while other boarders and skiers are continuing straight down the fall line. These conflicting motions will result in collisions which can be very dangerous.*

Response

“Conflicting motions” mentioned by the commenter occur throughout ski areas and skiers are responsible for being observant of their surroundings.

91. *Alt 3 uses a lower pitched egress trail over a longer distance than Alt 2. This reduces speeds, lowers the need to turn which creates bumps and moguls on the trail, increases safety, reduces the need for trail maintenance grooming, and the lower speeds reduces injuries in the event of an impact with a tree along the edge of the trail. These lower speeds also allow for the narrower trail which adds considerably to the wilderness skiing feel of BMG. There is no need for 35 foot wide egress is in Alt 2. Alt 3 extends the egress trail to the southeast. This is excellent, as it allows skiers/boarders to better use the entire BMG area by skiing all the way to the bottom of each glade.*

Response

The Purpose and Need for action is presented in Chapter 1 of the EA. Each alternative is expected to provide a safer egress and access. The commenter's feedback regarding Alternative 3 is appreciated.

92. *Alt 2 leaves a number of open glades BELOW the boundary rope which encourages users to duck under the rope and ski/board the enticing terrain. Then this leaves them below the Alt 2 trail head. Alt 2's design increases search problems for the Patrol. Alt 3 reduces this problem dramatically by putting the egress trail at the obvious bottom of the terrain. You ski all the way down to the bottom of the glade without traversing sideways, find the obvious trail at the bottom of the pitch with the rope and boundary signs, and exit the area on a less steep, slower, egress trail.*

Response

As disclosed in the EA, the boundary would be appropriately roped and signed to discourage use below the boundary. ASC cannot prevent all guests from illegally ducking ropes and skiing out of bounds.

93. *Alt 3 is more environmentally friendly as it clear-cuts less area and glades more. Glades hold snow quality better by shading existing snow so it does get sun crusts as quickly and capturing snow in the windy storms. Alt 3 also has a narrower egress trail which is desirable.*

Response

Thank you for your comment.

94. *By comparing the current skier activity on BM to "Back-Country" ski activity on other more remote and non-lift served areas of the WRNF, the study completely fails to correctly identify and address the concerns expressed by the existing user group that provided comments requesting continued protection of the unique "Side-Country" activity found only on BM. The nature of the terrain and access is rare and not found in any other lift served area in the Roaring Fork valley. To have access to lift served "Side-country terrain that is moderate and typically avalanche free, when conditions are marginal at best outside the ski area boundaries, is both unique and invaluable. The study opines that the loss is "negligible" compared to other areas available for back country ski terrain elsewhere in the WRNF. The study failed to note that there is no other comparable 'lift accessed', "Side country" terrain of the same quality anywhere else either at Snowmass or adjacent to any the other ski areas in the upper RF valley.*

Response

The Burnt Mountain Glades should not be considered backcountry or sidecountry as the terrain is within the developed operational boundary controlled and maintained by ASC. The current experience of the Burnt Mountain Glades and the impact to this experience is disclosed in the EA.

95. *The finding that the increased number of people may “INDIRECTLY” Impact the skier experience that is based on approved activity levels elsewhere on Snowmass mountain is ludicrous. The comments provided in opposition detail that the increase in number of skiers has a DIRECT negative effect on the user experience.*

Response

The Errata identifies the change in wording from “indirectly” to “directly.” The direct effect of the impact to increased snow compaction would be recognizable when fresh snow does not fall for several days.

## **F. TRAFFIC**

96. *DEA at 3-5. In our scoping comments, submitted by MGC on March 25, 2013, we explicitly quoted the ROD traffic cap requirement (and even attached a copy to those comments) and informed the agency that the traffic cap issue “must be analyzed by the Service’s NEPA document.” This request was ignored. Although the DEA incorporates by reference the 1994 EIS and ROD (see DEA at 1-11) -- in an attempt to avoid doing various updated impact analyses in the 2013 DEA -- the DEA never mentions any of the mitigation requirements imposed by the ROD. In particular, the DEA does not mention the TOSV traffic cap requirement imposed by the ROD; it does not disclose the TOSV traffic cap; it does not present any data that readers could use to judge whether the traffic cap is being exceeded; and it does not present the requisite “demonstrations” that ASC is fully complying with the TOSV traffic cap requirement.*

Response

The EA discloses the action alternatives’ potential traffic effects (p. 3-5). Snowmass is approved to have 13,500 skiers at one time (SAOTS) and are well below that number even on peak days. The action alternatives would increase skiers by an additional 100 guests per day, which would not require the Forest Service to approve an increase in capacity (measured in SAOTS). The mitigation measures described in the 1994 ROD pertain only to actions authorized by the 1994 decisions. (1994 ROD p. 24) “The permittee must also demonstrate that adequate measures are in place to ensure that TOSV’s traffic volume cap will not be exceeded. Final authorization to ‘operate’ any MDP components that will *increase area capacity* will be contingent upon such demonstrations.” (Emphasis Added) As the action alternatives do not seek to increase area capacity, no additional mitigation measures are required.

The TOSV Traffic Volume Cap referenced in the 1994 ROD is described in the 1994 FEIS (p. IV-287). This was determined using a “maximum peak-hour volume” Brush Creek Road 1,250, Owl Creek and

Highline Road 330. The FEIS recognizes that these volumes will be exceeded at every analyzed intersection during peak times.

Additionally, the ROD Errata Sheet states “The Forest Service has not determined the specific transportation mitigation that would be required for subsequent phases of the project, and, therefore, the mitigation identified in the Final Environmental Impact Statement (FEIS) would not necessarily be imposed for such phases. For this purpose the Forest Service will consider a full range of mitigations; there is no presumption that the particular measure identified in the FEIS would be adopted.” (November 7, 1994, pp. 8 through 9) Since the development of the 1994 EIS, ASC, TOSV, and RFTA have implemented many mitigation measures including increased public transportation, development of the Highway 82 Intercept lot, and road surface improvements to Owl Creek Road.

97. *Why isn't the USFS carefully studying this critical issue? What is the TOSV traffic cap? How is ASC's compliance with this cap being assessed by the agency? What peak traffic levels have occurred since the 1994 ROD was issued and this requirement went into effect? How many times has the traffic cap been exceeded? What is the projected increase in traffic with all the development that has occurred since 1994 and is expected to occur in the future? What "demonstrations" (if any) has ASC made to prove compliance before it requested authorization to glade Burnt Mountain and before it requested authorization to create the "improved" egress trail? What additional traffic mitigation measures has ASC committed to implement to "ensure" that the traffic cap will not be exceeded? A legally adequate NEPA document must answer these and other questions about the TOSV traffic problem. The DEA answers none of them.*

Response

The EA discloses the action alternatives' potential traffic effects (p. 3-5). Snowmass is approved to have 13,500 skiers at one time (SAOTS) and are well below that number even on peak days. The action alternatives would increase skiers by an additional 100 guests per day, which would not require the Forest Service to approve an increase in capacity (measured in SAOTS). The mitigation measures described in the 1994 ROD pertain only to actions authorized by the 1994 decisions. (1994 ROD p. 24) “The permittee must also demonstrate that adequate measures are in place to ensure that TOSV's traffic volume cap will not be exceeded. Final authorization to 'operate' any MDP components that will *increase area capacity* will be contingent upon such demonstrations.” (Emphasis Added) As the action alternatives do not seek to increase area capacity, no additional mitigation measures are required.

98. *The DEA's superficial discussion on traffic is also inaccurate in numerous respects. Most glaringly, concerning the DEA's assertion that "the Average Annual Daily Traffic (AADT) on Highway 82 at Brush Creek Road is 16,000 vehicles," this figure is meaningless without knowing what the actual traffic cap is. It is also inappropriate and deceptive to use an "average annual" measure of traffic to gauge compliance with the ROD traffic requirement because the ROD requirements deal with*

*peak traffic, not averages. The traffic cap could be exceeded many times during the peak of each ski season even while the AADT always remains far below the cap year after year.*

Response

The EA discloses the action alternatives' potential traffic effects (p. 3-5). Snowmass is approved to have 13,500 skiers at one time (SAOTS) and are well below that number even on peak days. The action alternatives would increase skiers by an additional 100 guests per day, which would not require the Forest Service to approve an increase in capacity (measured in SAOTS). The mitigation measures described in the 1994 ROD pertain only to actions authorized by the 1994 decisions. (1994 ROD p. 24) "The permittee must also demonstrate that adequate measures are in place to ensure that TOSV's traffic volume cap will not be exceeded. Final authorization to 'operate' any MDP components that will *increase area capacity* will be contingent upon such demonstrations." (Emphasis Added) As the action alternatives do not seek to increase area capacity, no additional mitigation measures are required.

99. *We believe it is also inappropriate and misleading for the DEA to only rely on monitoring traffic data from Brush Creek Road. Although Brush Creek Road is the main access way for vehicles into and out of TOSV, it is not the only one. The Owl Creek Road is a bypass to Highway 82 and is the shortest route between Aspen and Snowmass. This road has an improved surface (which was not the case when the 1994 EIS was prepared) and has become another significant source of traffic in the Town of Snowmass Village. TOSV monitoring data indicate that 3,000 or more vehicles may use this road each day in peak season.*

Response

The EA discloses the action alternatives' potential traffic effects (p. 3-5). Snowmass is approved to have 13,500 skiers at one time (SAOTS) and are well below that number even on peak days. The action alternatives would increase skiers by an additional 100 guests per day, which would not require the Forest Service to approve an increase in capacity (measured in SAOTS). The mitigation measures described in the 1994 ROD pertain only to actions authorized by the 1994 decisions. (1994 ROD p. 24) "The permittee must also demonstrate that adequate measures are in place to ensure that TOSV's traffic volume cap will not be exceeded. Final authorization to 'operate' any MDP components that will *increase area capacity* will be contingent upon such demonstrations." (Emphasis Added) As the action alternatives do not seek to increase area capacity, no additional mitigation measures are required.

100. *And efforts to achieve this increase will result in significant increases in traffic which the USFS has not studied and which ASC is has not demonstrated it can mitigate to ensure compliance with the TOSV traffic cap.*

Response

The EA discloses the action alternatives' potential traffic effects (p. 3-5). Snowmass is approved to have 13,500 skiers at one time (SAOTS) and are well below that number even on peak days. The action

alternatives would increase skiers by an additional 100 guests per day, which would not require the Forest Service to approve an increase in capacity (measured in SAOTS).

*101. To comply with the 1994 ROD and SUP, ASC “must demonstrate” that adequate measures are in place to ensure TOSV’s traffic volume cap will not be exceeded. This is not discretionary. It does not say anything about SAOT. It is not reactive, meaning it is not enough for ASC to wait for the traffic cap to be exceeded before it puts measures in place to reduce peak traffic back below the cap. It is a proactive requirement. The ROD is clear that ASC must implement measures to reduce traffic to ensure the TOSV traffic cap will not be exceeded in the future. This means adequate measures must be in place to account for increased visitation that will accompany economic recovery and to also account for completion of the Base Village and other developments in and around TOSV. Since it appears the traffic limit has already been exceeded on several occasions and will be exceeded more frequently in the coming years, it is evident ASC is not in compliance with the 1994 ROD.*

Response

The EA discloses the action alternatives’ potential traffic effects (p. 3-5). Snowmass is approved to have 13,500 skiers at one time (SAOTS) and are well below that number even on peak days. The action alternatives would increase skiers by an additional 100 guests per day, which would not require the Forest Service to approve an increase in capacity (measured in SAOTS). The mitigation measures described in the 1994 ROD pertain only to actions authorized by the 1994 decisions. (1994 ROD p. 24) “The permittee must also demonstrate that adequate measures are in place to ensure that TOSV’s traffic volume cap will not be exceeded. Final authorization to ‘operate’ any MDP components that will *increase area capacity* will be contingent upon such demonstrations.” (Emphasis Added) As the action alternatives do not seek to increase area capacity, no additional mitigation measures are required.

*102. The 1994 ROD is also unambiguous that final USFS “authorization” for any ski area developments that may increase ski area capacity “must” be contingent upon ASC demonstrating that the TOSV traffic cap will not be exceeded. Since it appears this required demonstration has not been made -- and the DEA does not cite any such demonstration -- it is our position that the USFS cannot legally authorize construction of the improved egress trail. In addition, because ASC did not make any such demonstration before glading the upper part of Burnt Mountain and adding it to the operational ski area, it is also our position that the USFS violated the 1994 ROD by authorizing those actions without making the authorization contingent upon the required demonstration of compliance by ASC. Given the seriousness of this issue, and because opening the gladed terrain on the upper part of Burnt Mountain was intended to increase the number of people visiting the Snowmass Ski Area, we feel it is reasonable to ask the USFS to revoke ASC’s authorization to place this gladed terrain within the ski area’s operational boundary. Unless and until ASC demonstrates conclusively that the TOSV traffic cap will not be exceeded under projected build-out of the Base Village and other developments in and around TOSV -- and will also not be exceeded upon*

*attainment of ASC's stated goal of increasing SAOT at Snowmass to 900,000 -- the agency should instruct ASC to return Burnt Mountain east of the Long Shot ski run to backcountry terrain that remains outside the operational boundary.*

Response

The ROD Errata Sheet states “The Forest Service has not determined the specific transportation mitigation that would be required for subsequent phases of the project, and, therefore, the mitigation identified in the Final Environmental Impact Statement (FEIS) would not necessarily be imposed for such phases. For this purpose the Forest Service will consider a full range of mitigations; there is no presumption that the particular measure identified in the FEIS would be adopted.” (November 7, 1994, pp. 8 through 9) Since the development of the 1994 EIS, ASC, TOSV and RFTA have implemented many mitigation measures including increased public transportation, development of the Highway 82 Intercept lot, and road surface improvements to Owl Creek Road. Neither of the action alternatives proposes to increase the SAOT. Moreover, the commenter’s assertion that ASC has the stated goal of increasing the approved Snowmass skiers at one time (SAOT) capacity from 13,500 to 900,000 SAOT is clearly a misinterpretation.

*103. 40 C.F.R. § 1508.27(b)(10) – This factor is triggered if “the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.” In 1994, the Service issued the Snowmass Ski Area Master Plan, along with an accompanying ROD. See Attachment C to Scoping Comment. The 1994 ROD required that the Service conduct monitoring to ensure that a traffic volume cap is not exceeded. In a section titled “Required Mitigation and Monitoring,” the ROD required “[d]emonstration by the permittee that adequate mitigation measures are in place to ensure that there will be no net increase in vehicle miles traveled (VMT) in the Aspen / Pitkin County nonattainment area from actions authorized by this Decision [and] [t]he permittee must also demonstrate that adequate measures are in place to ensure that TOSV’s (Town of Snowmass Village’s) traffic volume cap will not be exceeded.” Id. at 24. Indeed, the ROD noted that “[f]inal authorization to ‘operate’ any [master plan] components that will increase area capacity will be contingent upon such demonstrations. This will include either implementation of mitigation identified by the Forest Service as being adequate or written and executed agreements with agencies with jurisdiction that establish equivalent measures.” Id. Here, however, there appears to have been no demonstration by the Service or ASC – or any monitoring or mitigation for that matter – to comply with these legal requirements. Therefore, since the proposed action “threatens a violation of . . . law or requirements imposed for the protection of the environment,” an EIS is necessary.*

Response

The EA discloses the action alternatives’ potential traffic effects (p. 3-5). Snowmass is approved to have 13,500 skiers at one time (SAOTS) and are well below that number even on peak days. The action alternatives would increase skiers by an additional 100 guests per day, which would not require the Forest

Service to approve an increase in capacity (measured in SAOTS). The mitigation measures described in the 1994 ROD pertain only to actions authorized by the 1994 decisions. (1994 ROD p. 24) “The permittee must also demonstrate that adequate measures are in place to ensure that TOSV’s traffic volume cap will not be exceeded. Final authorization to ‘operate’ any MDP components that will *increase area capacity* will be contingent upon such demonstrations.” (Emphasis Added) As the action alternatives do not seek to increase area capacity, no additional mitigation measures are required.

104. *The 2013 Draft EA relies upon a 20-year-old traffic analysis from the 1994 EIS to conclude that the proposed action will not significantly impact traffic. The Service’s analysis in this regard is flawed: the mere fact that “Alternatives 2 and 3 are not anticipated to drive additional visitation that was not previously considered and analyzed in the 1994 EIS with respect to increased traffic volumes,” 2013 Draft EA at 3-5, does not mean that the associated impact on area traffic will be the same unless, that is, the baseline amount of traffic, without the additional skiers, is the same as it was whenever the traffic survey relied upon in the 1994 EIS was conducted. Given that almost twenty years have elapsed since the 1994 EIS was issued, one can only assume that traffic has increased in the Aspen/Snowmass area along with TOSV growth. If that is the case, then without knowing specific numbers, one cannot conclude that the additional traffic introduced to the area as a result of additional visitors responding to implementation of the proposed action would not put traffic beyond acceptable guidelines. This is particularly true in light of the recent construction of Base Village – a massive commercial and retail development that lures skiers and other visitors to the Snowmass Ski Areas – which has increased, and will continue to increase, vehicle traffic above the baseline analyzed in 1994.*

Response

The EA discloses the action alternatives’ potential traffic affects (p. 3-5). Snowmass is approved to have 13,500 skiers at one time (SAOTS) and are well below that number even on peak days. The action alternatives would increase skiers by an additional 100 guests per day, which would not require the Forest Service to approve an increase in capacity (measured in SAOTS). The impacts of non-skiing developments on private land in TOSV is beyond the scope of this EA.

105. *Furthermore, while the 2013 Draft EA briefly mentions a more recent survey regarding traffic numbers on “Highway 82 at Brush Creek Road,” id., the Service fails to mention that this highway “has had worse than average accident rates for more than 20 years,” and that the accident rate on Highway 82 in the Aspen area, particularly, has been increasing at a rapid rate, almost doubling since the latter half of the 1990s. See Colorado Dep’t of Transp. & Fed. Highway Admin., Traffic Characteristics and Safety Technical Report – State Highway 82 / Entrance to Aspen, Environmental Reevaluation at 16 (Feb. 20, 2007) (Exhibit 18). Numerous “roadway deficiencies” plague Highway 82, including “narrow shoulders, sharp curves (Scurves), lack of acceleration and deceleration lanes, and the presence of numerous private accesses to the highway.” Id. at 19. In fact, according to the Colorado Department of Transportation and the Federal Highway*

Administration, “summer traffic volumes on State Highway 82 [are] at capacity for most of the day, [and] there is little room for improvement,” *id.* at 20. Hence, it is especially troubling that the Service has failed to look at changed summer usage connected to the proposed egress project, as even a relatively small amount of additional visitation could lead to a disproportionately large negative impact on Highway 82’s already problematic traffic situation.

Response

The WRNF does not anticipate the proposed egress trail to encourage summer use. However, should people choose to hike up or down the proposed egress trail, the use effects to resources would be negligible and discountable. Regarding the 2003 MP, the proposed project, as described and analyzed in this EA, does not have value to promote summer recreation. This project is a winter ski area egress trail.

**G. WILDLIFE**

106. *Page 3-22 of the DEA states that “The effects of Alternatives 2 and 3 on habitat for threatened, endangered, proposed, candidate, and sensitive species and those species dependent on large, undisturbed areas of land are not anticipated to be significant.” Species (e.g., wolverine) that are dependent upon large, undisturbed areas of land will be adversely impacted by either of the action alternatives due to the increased presence of motorized vehicles and the increased numbers of skiers on Burnt Mountain. The 80- acre parcel and gladed terrain above will become “disturbed” areas whereas they are currently relatively “undisturbed areas.” The NEPA document needs to assess and disclose this impact and also disclose how many areas around Snowmass have been converted from “undisturbed” to “disturbed” so readers can get a sense of how much habitat has been lost for such species.*

Response

Impacts of the alternatives on wolverine were fully addressed in the Snowmass Ski Area, Burnt Mountain Skier Egress Trail Addendum for the North American wolverine (*Gulo gulo*).<sup>36</sup>

107. *The EA acknowledges that “[n]o development has occurred within the 80-acre area that has directly affected plant diversity and animal communities.” 2013 Draft EA at 3-18. In evaluating the project’s effects on wildlife and biodiversity, the Service concedes that some effects are anticipated as follows: “habitat loss,” “habitat removal,” “tree clearing in habitat,” “clearing could remove potential nests,” and “trail development proximate to streams and wetlands.” 2013 Draft EA at 3-44 through 3-46. Despite the aforementioned effects, the Service ultimately concludes that “[n]o impacts to biological diversity and the long-term survival of at risk species are anticipated,” and that “[t]he effects of Alternatives 2 and 3 on the diversity of plan [sic] and animal communities are not anticipated to be significant.” 2013 Draft EA at 3-21.*

*Nowhere, however, does the Draft EA mention the effects that the project could have on wildlife*

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<sup>36</sup> Nyland, 2013

*and biodiversity as a result of trail maintenance, artificial snow-making, and skiing activities in general, despite the myriad studies showing that all are known “to severely affect biodiversity,” Kebler et al., Direct and Indirect Effects of Ski Run Management on Alpine Orthoptera, 21 Biodiversity & Conservation 281 (2012) (Exhibit 9); see also, e.g., Jenni- Eiermann et al., Does Ski Tourism Affect Alpine Bird Fauna?, 62 Chimia 301 (2008) (Exhibit 10). Research has shown that skiing-related activities, construction, and maintenance including artificial snow- making are directly connected to a decrease in species richness, e.g., Kammer, Floristic Changes in Subalpine Grasslands after 22 Years of Artificial Snowing, 10 J. Natural Conservation 109 (2002) (Exhibit 11), and reduced reproductive success and changes in animal behavior in areas impacted by ski area operations and activity. See Rolando et al., The Impact of High-Altitude Ski-Runs on Alpine Grassland Bird Communities, 44 J. Applied Ecology 210 (2007) (Exhibit 12); Thiel et al., Ski Tourism Affects Habitat Use and Evokes a Physiological Stress Response in Capercaillie Tetrao Urogallus: A New Methodological Approach, 45 J. Applied Ecology 845 (2008) (Exhibit 13); Watson & Moss, Impacts of Ski-Development on Ptarmigan (Lagopus Mutus) at Cairn Gorm, Scotland, 116 Biological Conservation 267 (2004) (Exhibit 14).*

Response

The commenter’s continued substantiation of his points through citing articles that reference alpine ecosystems and species (Kebler et al. 2012, Jenni- Eiermann et al. 2008, Rolando et al. 2007, Watson & Moss 2004) renders his comments superfluous in regards to the Egress Trail, which is not located in an alpine ecosystem. We further fail to see the relevance of citing an article (Thiel et al. 2008) addressing the endangered capercaillie (a species of grouse endemic to Europe and Asia), and attempting to demonstrate any applicability towards the current project.

108. *Notably, wildlife populations in areas adjacent to ski runs exhibit particular difficulties: one study found a “negative edge effect” in bird species richness and diversity along the sides of ski runs, see Laiolo & Rolando, Forest Bird Diversity and Ski-runs: A Case of Negative Edge Effect, 8 Animal Conservation 9 (2005) (Exhibit 15); another study observed an analogous effect in similarly situated populations of small mammals, see Hadley & Wilson, Patterns of Density and Survival in Small Mammals in Ski Runs and Adjacent Forest Patches, 68 J. Wildlife Management 288 (2004) (Exhibit 16). Again, the EA completely fails to consider factors beyond habitat loss/removal in its analysis of the effects of the proposed project on wildlife. The literature is clear that the impacts of ski area operations and activities on wildlife, biodiversity, and wildlife habitat go well beyond those attributable to simple tree removal, and the Forest Service has failed in its statutorily mandated duty to take these impacts into account as required by NEPA and its regulations.*

Response

The EA did in fact comply with the NEPA and its implementing regulations, and did evaluate factors beyond habitat loss/removal at appropriate scales, which vary by species and management status. The MIS Assessment addressed the project’s impact on management indicator species habitat and population

trends at the scale of the WRNF, which is the appropriate scale of analysis for species of this management status. The BA addressed the project's effects on individual threatened, endangered, and proposed species at appropriate scales (LAU for lynx and existing population distribution for wolverine). The BE addressed the project's impacts on populations at the scale of the WRNF. These analyses in total did in fact consider factors beyond the individual change in habitat conditions in the Project Area.

109. *According to a U.S. Fish & Wildlife Service publication, “[n]oise does not have to be loud to have negative effects,” though, presumably, louder noises will have more measurable negative impacts than quieter ones. U.S. Fish and Wildlife Service, The Effects of Noise on Wildlife, available at <http://www.fws.gov/windenergy/docs/noise.pdf>. In the case of animals such as “birds, bats, and other wildlife, the [negative] effects [of disturbing noises] may be more profound.” Id. at 1. Indeed, exposure to “noise negatively influences bird populations and communities, and acoustic masking may be a dominant mechanism precluding many birds from breeding in noisy habitats.” Francis et al., Noise Pollution Changes Avian Communities and Species Interactions, 19 Current Biology 1415, 1418 (2009) (Exhibit 19). Noise exposure is also associated with negative impacts for non-avian species, as well: “Noise pollution exacerbates the problems posed by habitat fragmentation and wildlife responses to human presence. . . . Quieting protected areas is a prudent precaution in the face of sweeping environmental changes, and a powerful affirmation of the wilderness values that inspired their creation.” Barber et al., The Costs of Chronic Noise Exposure for Terrestrial Organisms, 25 Trends in Ecology 180, 187 (2010) (Exhibit 20). Thus, conservation biologists urge “immediate action to manage noise in protected natural areas.” Id*

Response

Thank you for your comment.

110. *Of particular concern to us, the DEA does not contain any real analysis or supporting data on most issues. Instead, it mostly presents unsupported assertions and conclusory statements. A disturbing example are the admission in the DEA that either action alternative may impact some individual wild animals with vulnerable populations, “but would not likely result in a lack of viability in the planning area, nor cause a trend towards federal listing or a loss of species viability rangewide.” See DEA at 3-47. However, there are no estimates given as to the population sizes in the “planning area” or range-wide, nor are any estimates given as to how many individuals could be impacted. For instance, if the population of boreal toads in the planning area (presumably the entire WRNF) is a few dozen, then impacting one or two individuals in this precarious population could be highly significant and could result in the lost of viability of the local population.*

Response

We fail to understand why it is “disturbing” to the commenter that even though individuals may be impacted, such an impact would not affect population viability. The Biological Evaluation prepared for the Master Plan provided supporting documentation of the impact to Forest Service sensitive species from

the implementation of the project. The appropriate scale of biological evaluation occurs at the level of the WRNF. The BE did provide information regarding population numbers for WRNF species where such numbers were available. The BE did contain real analysis and supporting data to back up its determinations. For instance, for boreal toad, we cited the existence of twelve known boreal toad breeding populations on or adjacent to the WRNF as documented in the Forest Plan. In addition, the Forest Service cited the more recent discovery of populations or individuals in the vicinity of the Snowmass Ski Area. The total numbers of individuals varies from year to year at each location, thus the total population number is not known, nor is it relevant to the discussion, as none of the known populations occur within the Project Area. Any impact to toads would occur as a result of an individual from an existing population wandering through the Project Area as it is being built, and getting crushed by machinery. The chances of this happening are actually so low as to be discountable. Yet the chance still exists, so an impact was conjectured as being possible, and documented in the BE.

## H. VEGETATION

111. *On-slope summer construction and maintenance activities, which “would be included in both of the [2013 Draft EA] action alternatives,” 2013 Draft EA at 3-26, have been shown to lead to significant changes to plant and soil composition. See, e.g., Wipf et al., Effects of Ski Piste Preparation on Alpine Vegetation, 42 J. Applied Ecology 306 (2005) (Exhibit 5). Grading and re-grading of slopes has been shown to be particularly problematic. See Exhibit 2 at 907 (“What remains after grading is usually a mineral substrate with low organic matter content and poor water holding capacity.”). Because “spot grading would occur,” 2013 Draft EA at 3-4, for both action Alternatives proposed in the 2013 Draft EA, the Service should have considered more than simply the effect such grading may have on the stabilization of soil: machine-grading leads to negative impacts on vegetation growth that have been shown to worsen significantly over time, indicating “poor recovery ability of these [machine-graded] alpine sites.” Exhibit 2 at 914. Thus, the available scientific studies are clear: “[M]achine grading of ski slopes causes severe impacts on vegetation, and ma[kes] spontaneous recovery impossible in the short term.” Exhibit 4 at 117 (citing Urbanska, Restoration Ecology Research Above the Timberline: Colonization of Safety Islands on a Machine-Graded Alpine Ski Run, 6 Biodiversity & Conservation 1655 (1997) (Exhibit 6)).*

### Response

The Wipf et al. (2005) and Urbanska (1997) articles both addressed grading impacts in alpine ecosystems. The Project Area is not located in an alpine ecosystem. As a consequence, the conclusions presented in each article are not applicable to the current project.

112. *In winter, snow-grooming vehicles and skiers compact the snow cover, which tends to “decrease thermal insulation and gas exchange capacity of the snow cover,” id., and, as a result, leads to “frost damage of plant vegetative parts and fine roots,” id. In addition, studies suggest that snow*

*making, which the 2013 Draft EA indicates may or may not be implemented in connection with the Burnt Mountain egress, see supra at 10, “induces new impacts to the environment beyond modifying the impacts of ski pistes in general.” Rixen et al., Does Artificial Snow Production Affect Soil and Vegetation of Ski Pistes? A Review, 5 Perspectives in Plant Ecology, Evolution and Systematics 219, 228 (2003) (Exhibit 7). For example, increased amounts of water input from melting artificial snowpack can lead to the “increase of erosion intensity” in affected soils. Id. at 225. Moreover, Wipf et al. note that “impacts of artificial snowing [on soil and vegetation] are cumulative and will become even more pronounced in the long term,” concluding that “the establishment of ski pistes should not be allowed in areas where any changes in vegetation composition or any decrease in plant species richness cannot be tolerated.” Exhibit 5 at 315.*

Response

The article cited as supporting evidence that snow grooming vehicles and skiers “decrease thermal insulation and gas exchange capacity of the snow cover” (Roux-Fouillet et al. 2011), goes on further to state that, “...little is known about how vegetation may respond to these perturbations over the long term,” and “...studies from multiple locations are needed for conclusions of general value.” The commenter’s efforts at “cherry-picking” sentences from the article to support his contentions, without placing the comment in context of the article’s overall conclusions, nor within the context of the plant community where the project would be built, renders the commenter’s points superfluous and arbitrary.

The Rixen et al. (2002) article that is cited by the commenter concluded that, “Although snow[mak]ing mitigates some of the negative impacts of ski piste preparation in general, new impacts induced by snow[mak]ing could be non-beneficial to the vegetation, which, however, has yet to be clarified.” This statement is actually a “non-conclusion” and should not be cited as evidence of any adverse impact of snowmaking. The comment, therefore, is not substantiated by the research cited by the commenter.

The Wipf et al. (2005) article addressed grading impacts in alpine ecosystems. The Project Area is not located in an alpine ecosystem. As a consequence, the conclusions presented in the Wipf et al. (2005) article are not applicable to the current project.

**I. WATERSHED AND WETLANDS**

113. Compare “[n]o waters of the U.S., including wetlands, are present in areas proposed for disturbance,” *id.* at 3-18 (*emphasis added*), with “MAI: [May Adversely Impact due to] trail development proximate to streams and wetlands,” *id.* at 3-46 (*emphasis added*).

Response

Both statements the commenter references are correct. No waters of the U.S., including wetlands would be directly or indirectly affected by the action alternatives. The MAI determination relates to the upland habitat, and potential habitat, adjacent to the stream or wetland that an amphibian might use.

114. *Again, should the Service authorize snowmaking activities on the proposed egress trail, that action will result in significant concerns about water depletion and the consequent impacts on listed fish species in Colorado watersheds such as the pike minnow, bonytail, razorback sucker, and humpback chub. Even if no snowmaking is authorized, there will nevertheless be significant impacts from the construction of the egress trail and the increase in skier use of Burnt Mountain due to the ablation of snowpack from skiing, grooming, and snowmobiling, which means that such snow will not be returned to the local waterbodies to recharge the hydrological systems but rather will almost certainly sublimate or evaporate. These issues must be analyzed under NEPA as significant hydrological and wildlife effects of the proposed action, and must be analyzed under the ESA – in consultation with the U.S. Fish and Wildlife Service – concerning the impacts to federally protected fish species that would be affected by the water depletion and alterations caused by the proposed action.*

Response

The description of alternatives are presented in Chapter 2 of the EA (pp. 2-1 through 2-3). The alternatives do not propose the use of snowmaking.

115. *In the section discussing Watershed Resources, the 2013 Draft EA purportedly extends its analysis “through reasonably foreseeable future developments such as those outlined in the 2003 Master Plan.” 2013 Draft EA at 3-7. Without identifying what those future developments might be, the Service nonetheless concludes that “[n]o irreversible and/or irretrievable commitments of watershed resources have been identified from either of the action alternatives.” Id. at 3-8. Ostensibly, this conclusion is based on the assertion that “the 1994 EIS analyzed potential effects on watershed resources of substantially more tree clearing on Burnt Mountain than is analyzed in this EA, and conclude[d] that . . . potential effects on watershed resources would be negligible.” Id. at 3-7. However, the 1994 EIS clearly states that “impacts on a watershed basis tends to understate the severity of localized effects [and] [a]uthorized actions would require additional site-specific geotechnical review and prescribed mitigation prior to implementation.” 1994 EIS at II-131 (emphasis added). [Footnote 7: This is yet another issue that requires interagency consultation with the U.S. Fish and Wildlife Service pursuant to section 7 of the ESA. Because this project includes the construction of the ski trail, the cutting of trees to facilitate the trail, and the potential snowmaking on this trail – all of which will inevitably have hydrological impacts on downstream resources – there is a strong likelihood that these significant alterations will deplete water from nearby waterbodies; adversely affect nearby wetlands; and, in conjunction with other water depletions in the local ecosystem, cumulatively lead to grave impacts to federally protected fish species residing in Colorado’s rivers and other waterbodies.] The 2013 Draft EA maintains that, “[a]lthough the current Project Area differs from what was originally analyzed (in 1994), no additional impacts to streams or wetlands have been identified,” id., without providing any further explanation or any substantive analysis or data. To our*

knowledge, no additional site-specific geotechnical review has occurred in this instance, and, in fact, it is hard to imagine how such review could proceed without a more concrete definition of what the project will entail. Furthermore, although it is unclear from the 2013 Draft EA whether snowmaking will be implemented, see *supra*, at 10, given the abundance of studies documenting the effects of man-made snow on hydrology, stream channel morphology, and other watershed resources, see, e.g., Exhibit 3, the mere possibility that man-made snow will be introduced to the Burnt Mountain area warrants further consideration. [Footnote 8: The idea that snowmaking, in and of itself, requires NEPA analysis, given its potential to affect the surrounding environment, is nothing new. In 2000, an EA prepared by the U.S. Army Corps of Engineers suggested that “snowmaking installations at Colorado’s Keystone Ski Area may be spreading toxic heavy metals . . . into previously untainted streams,” Berwyn, *Corps of Engineers Puts Colorado Snowmaking Installations Under Scrutiny*, *Environmental News Network*, Oct. 30, 2000 (Exhibit 8).]

#### Response

The description of alternatives is presented in Chapter 2 of the EA (pp. 2-1 through 2-3). The alternatives do not propose the use of snowmaking. No waters of the U.S., including wetlands would be directly or indirectly affected by the action alternatives. Additionally, any watershed impacts from tree removal “could be restored over the long-term” (p. 3-8).

## **J. GEOLOGY/SOILS**

116. *The 2013 Draft EA incorporates by reference the analysis completed in the 2006 EA for potential impacts of the project on soil resources. The 2006 EA found that the potential effect on soil resources was a “[n]on-significant Issue.” 2006 EA at 17. Effects on vegetation are briefly considered in the 2013 Draft EA, with the Service concluding that although “egress trails could represent an irretrievable effect to some threatened and endangered, or R2 sensitive species within the SUP area,” 2013 Draft EA at 3-61, “this is not considered an irreversible commitment because the habitat (vegetation) is a renewable resource,” id. As explained more fully below, these conclusions regarding soil and vegetation are inconsistent with the bulk of scientific studies looking at the effects of ski slope management – including skiing itself, machine-grading of slopes, and the use of artificial snow [Footnote 6: See *supra* at 10 (discussing inconsistencies within the 2013 Draft EA regarding the topic of artificial snow).] – on the condition of alpine soil and vegetation. For example, in 2011, one study found that “[d]ownhill skiing, the machine grading of slopes and the use of artificial snow induce major disturbances to the environment of alpine ski resorts,” Exhibit 2 at 906 (emphasis added); see also Exhibit 4 at 117 (“The damage to soil and vegetation cover caused by ski piste preparation, and particularly by snowpack compression and machine grading and leveling, are well-reported in the literature.”).*

Response

With the application of Project Design Criteria (PDC) identified in Chapter 2 of the EA, the determinations made in the EA regarding soils and vegetation are appropriate for the scale of this project. The anticipated impacts to soils are disclosed on pages 3-3 through 3-5 of the EA.

117. Compare “[n]o severe geologic hazards are present within the Snowmass Ski Area Boundary . . . [and] proposed construction would occur within soils with low mass movement potential,” *id.* at 3-3 & 3-4 (*emphasis added*) (citing 1994 ROD), with “the area proposed for [the Eastern Burnt Mountain] skiing pod is highly unstable” and “[t]here is copious evidence of active landslides, debris avalanches and other forms of coarse sediment[] erosion” and thus “the permittee and Forest Service may decide to undertake additional environmental analysis . . . on the suitability of the eastern pod area for development of some type. . . . [which] would involve detailed geotechnical studies and documentation in a separate NEPA document,” 1994 ROD (*emphasis added*)

Response

The EA cites Soils and Geology technical findings from 2006 EA (p. 3-3) and that found low mass movement potential for the area underlying the proposed construction in Alternatives 2 and 3. Additionally, the proposed grading was found to be a minor irreversible and/or irretrievable commitment of soil resources with a negligible effect (p. 3-5).

## K. SCENERY

118. While the Forest Service acknowledges that “despite the design of the trail to minimize disturbance, due to the linear nature of trail cutting, the egress trail would be visible from some viewpoints in the foreground and middleground,” 2013 Draft EA at 3-6, there is no discussion as to the actual impacts those changes to the viewpoints might encompass. For example, research on tourism reveals that as the number of visible ski slopes in a particular area’s landscape increases, the amount of tourist activity, at least during summer months, decreases. See, e.g., Exhibit 2 at 907; Ristić et al., *Land Degradation at the Stara Planina Ski Resort*, 49 *Environmental Management* 580 (2012) (Exhibit 17). The Service should, at the very least, address the effects that the landscape degradation resulting from the proposed action and alternatives may have on visitor experience, especially in light of the currently wilderness-like nature of the 80-acre parcel, as well as the physical boundary Burnt Mountain Ridge provides between the Burnt Mountain Glades and the rest of the Snowmass ski area. Further, the Service’s assurances that “[a]ny tree removal that may be visible from either of the action alternatives could be restored overtime [sic],” see 2013 Draft EA at 3-7, are made without any given basis, and, in fact, are contrary to both scientific literature, see, e.g., Exhibit 4 at 117, and prior statements made by the Service in the 2006 EA. See, e.g., 2006 EA at 18 (“Revegetation [at the elevation of the proposed Burnt Mountain egress] is variable depending on the amount of organic matter in the soil surface layers.”).

### Response

Views from the foreground would primarily be within the developed ski area. People with this view expect the ski area to look like a ski area, and therefore the proposed egress route would be consistent with this expectation. Views from the middleground would be nearly indistinguishable due to slope, topography and the spatial bounds of the action alternatives. The action alternatives would not impact tourism due to visual degradation of the landscape. Should overstory revegetation of the egress trail be a future goal, soil amendments/topsoil could be provided where necessary to promote revegetation. This is not a condition or requirement of this EA because overstory revegetation of the egress trail is not an expectation at this time.

## **L. NOISE**

119. *The Service chose to eliminate analysis of potential noise impacts from the 2013 Draft EA, explaining that “[e]ffects to [this] resource from developing and operating the Burnt Mountain Glades was analyzed and approved in the 1994 EIS [and] the 2006 EA.” 2013 Draft EA at 1-10. Yet, in light of the “highly unstable” characteristics of at least some of the Burnt Mountain Glades area, as well as the arguable need for production of artificial snow to make the proposed egress reliably usable, the Service should have looked at the effects that both avalanche control measures – namely, the use of dynamite to trigger controlled avalanches – and snowmaking (should the Service authorize snowmaking) could pose in the form of increased noise in the surrounding area.*

### Response

The use of avalanche control measures is not a connected action of the action alternatives. Snowmaking is not being proposed for this project.

## **M. ECONOMICS**

120. *We are therefore requesting that USFS arrange for an independent investigation -- by an impartial investigating body that does not have any financial interest in ski area lift ticket prices or concession operations -- to determine if the rapid increase in lift ticket prices by ASC is related to either (1) its monopolistic control over the market in the Aspen-Snowmass area, or (2) efforts to control prices with other ski companies that should be acting as competitors to help keep prices from being unfairly inflated.*

### Response

This comment is beyond the scope of this analysis.

## N. CUMULATIVE EFFECTS

121. *As for the temporal scope of the project, the 2013 Draft EA’s cumulative effects analyses purportedly look “through the foreseeable future in which Snowmass can be expected to operate,” presumably until, at least, the year 2074. See 2013 Draft EA at 3-31 (“Snowmass’ current 40-year SUP expires December 31, 2034; however, this analysis assumes the SUP would be reissued after the 2034 date.”); see also id. at 3-48 and 3-60 (temporal bounds used in analyzing cumulative effects to wildlife and vegetation extend through “the foreseeable future during which recreation-related activities may affect species”). Given that these analyses are supposedly meant to address impacts of activities occurring, at minimum, for the next sixty-one years, and, more likely, in perpetuity, and that they are conceivably taking into account the countless potential projects, actions, and developments laid out in the 2003 MP, the lack of space dedicated to cumulative impacts in the 2013 Draft EA is astonishing; despite extensive research to the contrary, the Service claims that ASC’s predicted operation of the Snowmass Ski Area well into the latter half of this century (and beyond) will have, with few exceptions, minimal to no cumulative impacts to the areas analyzed. E.g., 2013 Draft EA at 3-4 (minimal cumulative impacts to soil and geology); id. at 3-5 (no cumulative impacts to traffic); id. at 3-7 (minimal cumulative impacts to scenery resources and watershed resources “from ski area and private land development”); id. at 3-25 (no cumulative impacts to roadless areas). In fact, the available scientific literature clearly cuts against any presumption that there will be only minimal cumulative impacts attributable to additional development via the proposed egress trail and any other projects implemented pursuant to the 2003 MP. See, e.g., Roux- Fouillet et al., Long-term Impacts of Ski Piste Management on Alpine Vegetation and Soils, 48 J. Applied Ecology 906 (2011) (Exhibit 2); David et al., The Impacts of Ski Slope Development on Stream Channel Morphology in the White River Nat’l Forest, 103 Geomorphology 375 (2009) (Exhibit 3) (examples of impacts on watershed resources); Geneletti, Impact Assessment of Proposed Ski Areas: A GIS Approach Integrating Biological, Physical and Landscape Indicators, 28 Environmental Impact Assessment Review 116 (2008) (Exhibit 4) (examples of scenery impacts).*

### Response

The effects of the ski area development were primarily analyzed in the 1994 Snowmass FEIS. The proposed project would have minimal cumulative impacts compared in context with those analyzed in the 1994 FEIS.

# Errata

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# ERRATA

This document reflects revisions made to the 2013 *Snowmass Ski Area Environmental Assessment for the Burnt Mountain Egress Trail* (2013 EA) to correct typographical errors, expand discussion of statements requiring further explanation, and clarify statements based on public or agency comments. New text is indicated by grey highlighting (e.g., new text), while deleted text is struck through (e.g., ~~deleted text~~).

## 2013 EA – PAGE 3-19

### 4. Habitat for Threatened, Endangered, Proposed, Candidate, and Sensitive Species, and for Those Species Dependent on Large, Undisturbed Areas of Land

The 80-acre area was found to have habitat for the following species:

- **Threatened and Endangered species:** Canada lynx, Mexican spotted owl, Colorado pikeminnow, razorback sucker, humpback chub, bonytail and Uncompahgre fritillary
- ~~**Proposed-Threatened Species:**~~ North American Wolverine
- **Region 2 Sensitive Species:** marten, pygmy shrew, northern goshawk, boreal owl, northern harrier, olive-sided flycatcher, American peregrine falcon, white-tailed ptarmigan, flammulated owl, three-toed woodpecker, purple martin, brewer's sparrow, and boreal toad, northern leopard frog, ~~mountain sucker, Colorado River cutthroat trout~~ Hudsonian emerald, moonwort, triangle lobe moonwort, narrowleaf grapefern, peculiar moonwort, yellow lady's slipper, and plains rough fescue

## 2013 EA – PAGE 3-23

### 7. Natural-Appearing Landscapes with High Scenic Quality

Considering the approximate 0.4 acre of grading and 2.5 acres of tree removal for Alternative 2 or 0.2 acre of grading, ~~0.9~~ 0.8 acre of clearing and 4 acres of glading for Alternative 3, the Project Area would continue to meet the SIO of “Low” which allows for a moderately altered landscape.

## 2013 EA – PAGE 3-23

Construction of the proposed Burnt Mountain Egress Trail would include approximately 2.5 acres of tree clearing under Alternative 2 and ~~0.9~~ 0.8 acre under Alternative 3.

## 2013 EA – PAGE 3-24

In the context of the 2012 Colorado Roadless Rule's prohibition on tree cutting, sale or removal, developed skiing is a “management activity not otherwise prohibited” and removal of approximately 2.5 or ~~0.9~~ 0.8 acre of timber under Alternative 2 or 3, respectively, is plainly “incidental” to implementation of the skiing activity.

## **2013 EA – PAGE 3-27**

### **Skier Egress**

Currently, skiers must have knowledge of the terrain (to find the ~~previously-disturbed platform roadbed~~ and avoid topographical obstacles) to return to the ski area.

## **2013 EA – PAGE 3-29**

Providing improved egress is likely to increase the number of people skiing the Burnt Mountain Glades and the number of trips skiers make within the glades, which may ~~indirectly~~ directly impact the recreational experience on the Burnt Mountain portion of the SUP area mainly due to a slight increase in compacted snow conditions.